



FAO-3026-2006

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

206

FAO-3026-2006 (O&M)
Date of Decision: 19.09.2024

Dhani Ram and others

.....Appellants

Versus

Purshotam and others

.....Respondents

206-A

FAO-3027-2006 (O&M)

Phool Chand and others

.....Appellants

Versus

Purshotam and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sukhdeep Singh, Advocate and
Mr. Lokesh Singhal, Advocate for the appellants.

Mr. Ishan Aggarwal, Advocate for respondent No.1.

Mr. Rajesh Lamba, Advocate,
Ms. Sweety Chahal and Mr. Narinder Nain,
Advocates for respondent No.2.

Mr. R.C. Gupta, Advocate
for respondent No.3.

SUDEEPTI SHARMA J. (ORAL)

None has put in appearance on behalf of the Insurance Company.

1. This is an old matter pertaining to the year 2006 but no one has put
in appearance on behalf of Insurance Company.

**FAO-3026-2006****2**

2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On asking of the Court, Mr. R.C. Gupta, Advocate accepts notice on behalf of respondent-Insurance Company.

4. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent-Insurance Company-Mr. R.C. Gupta, Advocate.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. R.C. Gupta, Advocate, the counsel engaged by this Court in the present case.

FAO-3026 & 3027 of 2006 (O&M)

This order shall dispose of the above said two appeals as identical question of law is involved therein. For brevity, facts have been taken up from FAO-3026-2006.

1. The present appeals have been preferred against the award dated 07.04.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal'), vide which the claim petitions filed by the appellants/claimants, who are the family members of the deceased, were dismissed.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case are that on 08.03.2003, Rishipal along with Sanjay @ Bunti was coming on motorcycle No.DL-IS-8369 from village Tumshara to Delhi and when they reached near Tumshara turn at G.T. Road, the offending Tata Sumo bearing No.RJ-14-2C-2236 came from the side of Delhi being driven by respondent No.1 in a rash and negligent manner and hit against the aforesaid motorcycle and drag the same to some distance. As a result of this accident, Rishipal as well as Sanjay @ Bunti sustained fatal injuries and died at the spot. Since the radiator and engine of the Tata Sumo in question was defected due to this accident, the same was left by the respondent No.1 few kilometers away from the site of accident and he ran away. Port-mortem of the dead bodies of both the deceased was conducted at Civil Hospital, Palwal, FIR regarding this accident was lodged in Police Station Sadar Palwal bearing No.132 dated 09.03.2003 under Sections 279/304-A/427 of Indian Penal Code.

3. Upon notice of the claim petition, respondent No.1 and 3 filed reply wherein they denied the factum of averments made in the claim petition

4. From the pleadings of the parties, the Tribunal framed the following issues:-

- 1) *Whether the alleged accident resulting into the death of Rishipal son of Phool Chand and Sanjay alias Bunti son of Dhani Ram took place due to rash and negligent driving of Sumo bearing No.RJ-14-2C-2236 by respondent No.1? OPP*
- 2) *If issue No.1 is proved, whether the petitioners are entitled to compensation and if so how much and from whom? OPP*
- 3) *Whether the petition(s) is/are not maintainable in the present form? OPR*



- 4) *Whether at the time of alleged accident, the vehicle involved was being driven by a person who was not holding a valid and effective driving licence and if so its effect? OPR-3*
- 5) *Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. Learned counsel for the appellants contends that the award has been dismissed only on the ground that there was delay in lodging of the FIR. Therefore, he prays that the present appeal be allowed.

7. Per contra, learned counsel for the respondents vehemently argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the record shows that Jagdish Parshad s/o Kanhiya Lal was examined as PW-6, who deposed that on 08.03.2003 at about 12:00 in the mid-night, he was going from Jawahar Colony, Faridabad to Hodal on his motor-cycle being driven by his son-Pawan Kumar and when he reached near the turn of Tumashra, they saw that a Tata-sumo vehicle bearing No. RJ-14-2C-2236 came from the side of Faridabad heading towards Hodal side and the driver of the same was driving the vehicle in a very rash and negligent manner and two boys riding on a motor-cycle on Kacha portion of the road were waiting for the turn but in the meantime, the aforesaid Tata-sumo vehicle dashed the



the Tata-sumo vehicle on seeing him fled away alongwith vehicle. The front glass-pane of that Tata-sumo vehicle was found broken and its front portion was also in damage condition. Then, he chased that Tata-sumo vehicle on their motor-cycle and also gave signal to him to stop but he did not stop. Then the driver of Tata-sumo vehicle stopped the same at some distance from Hodal and there were occupants in that vehicle and one was saying 'Purshotam some motor-cyclist are chasing them whereupon he ran away therefrom leaving the vehicle there'. Then they went to their destination at Hodal. The registration number of the Tata-sumo was noticed by them as stated by him above. On the next day at about 4:00 p.m. he was coming back from Hodal and stopped at the turn of Tumasra where he found two persons present there and he made enquiries from them as to what had happened with the two boys who had met with an accident yesterday. They told him that one Anil is their relative and he knows about the same and they would call him and then out of them one person went away to call him and thereafter Anil came there and he told him that the registration number of the vehicle and also gave him my address. On the third day thereof I was called I the police station and police recorded his statement and he narrated the entire happening. He was cross examined at length, but there was no discrepancy in his cross examination. The factum of accident is proved by his statement. However, Hoshiar Singh who was examined as PW-7 mechanically examined the motor cycle.

10. There is post mortem report as well.

11. Vinod Kumar was examined as RW-1 who was additional Ahlmad in the Court of Sh Jagjit Singh SDJM, Palwal, who brought the summoned criminal case file, titled as ***State Vs. Purshottam***, bearing FIR No.132 dated



09.03.2003 for an offence punishable under Sections 279, 304A, 427 IPC at Police Station, Palwal.

12. Ranbir Singh, ASI, Faridabad was examined as PW-2 who stated that while conducting proceedings under Sections 174 and 175 Cr.P.C. on 11.03.2003, Jagdish Parshad (PW-6) disclosed the name of the driver and number of the vehicle. In his cross-examination, he stated that driver in this case got surrendered by the owner in the Court itself and the owner of the vehicle had told that the driver-Parshottam was driving the offending Sumo.

13. A perusal of the post mortem report so proves the factum of accident since in the remarks of Medical Officer, it has been stated as under:-

“ In my opinion, the cause of death is the hemorrhage and shock due to excessive loss of blood as a result of multiple fractures in the accident.”

14. The reasoning given by Ld. Tribunal while dismissing the claim petition is as under:-

17. The accident is dated 8.3.2003 in the night. As per version of PW-6 Jagdish Parshad after seeing the accident caused by TATA Sumo in question, he followed the said vehicle and then from there he went to his destination. Then on the next day (i.e. 9.3.2003) he was coming from Hodal and he stopped at the turn of Tumshra where he found two persons present and he made enquiries from them as to what had happened with the two boys who had met with an accident yesterday. These persons told him that one Anil is their relative and he knows about the same. Thereafter Anil was called there and he (PW-6) told him the registration number of the vehicle. On the third day thereof, PW.6 was called in the police station and



police recorded his statement. Thus, from this version of PW.6, it transpires that he did not make any statement on 9.3.2003 before the police and he was not present with the family members of the deceased persons. He himself in his cross-examination denied the suggestion that he was present when the police was conducting the proceedings. However, as is evident from the statement of RW.2 Ranbir Singh ASI, Investigating Officer of the case coupled with proceedings under section 174 & 175 Cr.P.C. Ex.R.1, PW 6-Jagdish Parshad was present on 9.3.2003 when RW.2 conducted those proceedings under section 174 & 175 Cr.P.C. and he also signed those proceedings. Even the postmortem report of deceased Sanjay Ex.P-8 which is dated 9.3.2003 also bears the signatures of PW6 Jagdish Parshad against the identification. In this view of the situation, I am of the opinion that when PW6 Jagdish Parshad was present on 9.3.2003 during aforesaid proceedings then what was the hitch for him not to disclose the number of vehicle and name of driver on that day which he disclosed on 11.3.2003. Since there is no explanation on record on his behalf in this regard, therefore, the veracity of this witness has become doubtful. Moreover, in the cross-examination this witness has stated that when he had gone to Police Station, TATA Sumo was already lying parked there but a perusal of recovery memo Mark X-4, which bears his signatures, shows that the said vehicle was recovered in his presence from ahead of village Banchari. Thus, the evidence led on behalf of petitioners to prove that the accident in question had taken place due to rash and negligent driving of TATA Sumo in question by



respondent no.1 is not believable. At the most from the evidence on record in the shape of copy of FIR Ex.P.7, copy of postmortem reports Ex.P.6 and Ex.P.8 and other evidence on record it can be taken that Rishi Pal and Sanjay had died due to the injuries sustained by them in an accident but involvement of the TATA Sumo in question is not proved on record. Is respondent no.1 is facing criminal trial for having caused the alleged accident, it does not prove that the vehicle in question was involved in the accident in question.”

15. A perusal of the above shows that the Ld. Tribunal totally ignored the evidence on record as discussed above by this Court.

16. Since issue No.1 was decided against the claimants, the issue No.2 regarding compensation was not decided. For amount of compensation, the evidence on record is as under:-

i) Subhash Chand who was examined as PW-1 with whom Rishi Pal was working as Supervisor and used to pay monthly salary of Rs.7000/- . He has been cross-examined at length but nothing could be elicited from his deposition.

ii) Deepak Kapoor was examined as PW-3 with whom Sanjay Kumar S/o Dhani Ram was working as Computer Operator and he used to pay him Rs.5500/- per month.

iii) Anita wife of Rishi Pal was examined as PW-4, who submitted regarding the monthly salary of the deceased Rishipal as Rs.7000/-. She was also cross examined at length but nothing fruitful could be extracted from her cross examination

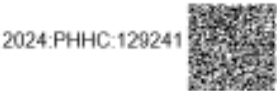
iv) Dhani Ram who was father of deceased-Sanjay was examined as PW-5, who deposed regarding the death of his son and also about his working.

**SETTLED LAW ON COMPENSATION**

17. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant.



In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

** * * * **

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.



18. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in Rajesh². It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank*



interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to



60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

19. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18)**

SCC 130] after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)**



has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during*

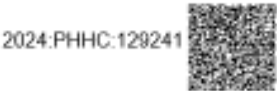


their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in



Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

CONCLUSION

20. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 07.04.2006 is set aside accordingly. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2300/- p.m
2	Future prospects @ 40%	Rs.920/-
3	Deduction towards personal expenditure 1/3rd	Rs.1073 (2300+920)
4.	Total Income	Rs.25,524/- (2127X12)
4	Multiplier (Age 22 years)	18
5	Annual Dependency	Rs.4,59,432/-
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- x 1 Spousal : Rs. 48,000/-x 1 Filial : Rs. 48,000/-x 1	Rs.1,44,000/-
	Total Compensation	Rs.6,39,432/-

21. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.



22. The Insurance Company is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the accounts of all the claimants/appellants. Claimant/appellants No.1 and 2 are entitled to receive the amount to the extent of 40% each whereas claimant/appellant No.1 is entitled to receive the amount in equal share. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

23. Before parting with the judgment, this Court extends its appreciation to Mr. R.C. Gupta, Advocate, for his able assistance to the Court in the present matter. Further, the Insurance Company-respondent No.3 is hereby directed to disburse the current scheduled fees to Mr. R.C. Gupta, Advocate within a period of 10 days from the date of receipt of certified copy of this judgment.

24. Disposed off accordingly.

25. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

September 19, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes