**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

216 **FAO-4311-2007 (O&M)**
Date of Decision: September 02, 2024

Surender Kumar and others **......Appellant(s)**

Vs.

Raj Kumar Sharma @ Kalu and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kartar Singh Malik, Advocate
for the appellants.

Mr. Sant Lal Barwala, Advocate
for respondent No.2.

Mr. Lalit Garg, Advocate
for respondent No.3

SUDEEPTI SHARMA J. (ORAL)

None has put in appearance on behalf of the Insurance Company for the last two consecutive dates of hearing.

2. This is an old matter pertaining to the year 2007 but no one has put in appearance on behalf of the Insurance Company.

3. 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, this Court would request the counsel empanelled with the Insurance Company, 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.

4. On the asking of the Court, Mr. Lalit Garg, Advocate accepts notice on behalf of respondent No.3-Insurance Company.

5. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent No.3- Insurance Company.

6. 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. Lalit Garg, Advocate, the counsel engaged by this Court in the present case.

FAO-4311-2007

1. The present appeal has been preferred against the award dated 18.04.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1989 by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') for enhancement of compensation granted to the claimants/appellants, who are the family members of the deceased.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 24.06.2005, Ganga Bishan was traveling as pillion rider upon motorcycle bearing Registration No. HR-12D-7894 being driven by respondent No.1 from Bhiwani to Meham. When the motorcycle reached near village Chang, its front tyre burst resulting in serious injuries to Ganga Bishan. Ganga Bishan died due the injuries.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

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

1. Whether respondent no.1 was rash and negligent while driving vehicle No. HR-12-D/7894 and responsible for causing the accident in question as alleged in the petition? OPP.

2. If Issue no.1 is proved whether the petitioners are entitled for compensation on account of the termination of life of late Ganga Bishan, as alleged in the petition, if so to what amount and from whom ? OPP

3. Whether respondent no.1 had no valid and effective driving licence at the relevant time?OPR-3

4. Whether respondent no.2 had contravened the terms and conditions of the insurance policy, as alleged in the petition ? OPR-3

5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal held that respondent No.1-driver and respondent No.2-owner of the offending vehicle, were liable to pay the compensation jointly and severely to the tune of Rs.3,39,000/- alongwith interest @ 7.5% per annum. Hence the claimants/appellants filed the present appeal for enhancement of compensation awarded by the Tribunal.

<u>SUBMISSIONS OF THE COUNSELS</u>

6. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side.

i) He further submits that the learned Tribunal has erroneously taken the income of deceased as Rs.3746/- per month.

ii) The Ld. Tribunal erroneously applied multiplier of 10 instead of 14.

iii) He further contends that no amount was granted for future prospectus, loss of estate and for consortium.

iv) The amount awarded for funeral expenses is also on lower side.

Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

7. Per contra, learned counsel for the respondent No.2 (owner of the vehicle), contends that accident occurred due to suddenly burst of the tyre of the offending vehicle and accident had not happened due to negligent and rash driving of respondent No.1. He further submits that respondent-Insurance company is also to be held liable for compensation. He further contends that Ld. Tribunal incorrectly relied upon the judgment of Hon'ble Supreme Court in case of ***United India Insurance Company Ltd. Shimla Vs. Tilak Singh and others, 2006(4)SCC 404,*** wherein it was held that insurance company bears no liability for compensation in cases of pillion rider, and the responsibility was affixed on the driver and owner. He further contends that it is pertinent to note that the facts of the present case are distinguishable form those in ***United India (supra)***. He further contends that the facts of the present case are squarely covered by the law laid down in judgment rendered in **Shiv Lochan Singh @ Bhola Vs. National Insurance Co. Ltd**., **2018(1)RCR (Civil) 559** and in **FAO No.2275 of 1998** titled as **National Insurance Co. Ltd. Vs. Nasib Kaur** and others, wherein it was held that distinction of ' Act only Policy' and ' Package Policy' do not hold good: qua covering the claim of damages caused to third party, which include the passenger in a private passenger car and a pillion rider on a motor cycle. In view of above, it held that the Insurance Company shall be liable

to pay amount of compensation in the present case. The recovery rights granted by the Tribunal to the Insurance Company are set aside.

8. Per contra, learned counsel for the respondent No.3-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

10. With respect to the contention raised by respondent No.2-owner of the vehicle regarding the liability of the insurance company to compensate in cases of injury or death of a pillion rider is concerned, the matter is currently pending before Hon'ble the Supreme Court in case of **Mohana Krishnan Vs V. K. Balasubramaniyam & ors.** in SLP No.3433/2020 wherein it was observed as under:-

> *"Learned counsel for the insurance company relies upon two judgments of this Court reported as 2006 (4) SCC 404 and 2008 (7) SCC 428 to contend that a pillion rider on a motorcycle is not a third party, therefore, the insurance company is not liable to indemnify the insured on account of the injuries or death of such pillion rider.*
>
> *The basis of the said argument is Indian Motor Tariff Endorsement No. 70, which is to the effect that in "Act Only" policy, the insured has to pay extra premium to cover the pillion rider.*
>
> *However, the question as to whether the third party includes all other persons other than the insured, who is the first party and the insurer, who is the second party. Therefore, all other persons who are neither the insured nor the insurer will be third party and will be covered by the Act Only policy, we have prima facie reservation about the view expressed. Such question is required to be determined authoritatively.*

Therefore, the Registry to place the matter before Hon'ble The Chief Justice of India to constitute a larger bench to consider the question of law as mentioned above by an appropriate Bench."

11. In view of the above, the findings of the learned Tribunal on this issue do not warrant any interference by this Court.

12. A perusal of the award indicates that the Tribunal has rightly assessed the monthly income of the deceased as Rs.3746/- based on the salary certificate issued by the employer of the deceased-Ganga Bishan.

Further, the Tribunal had applied a multiplier of 10 instead of 14.

It is further revealed that the learned Tribunal has not granted future prospectus as per the settled law and amount granted for funeral expenses was also on lower side.

Furthermore, no amount was granted under the conventional Heads, therefore, requires interference by this Court.

SETTLED LAW ON COMPENSATION

13. 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 a 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 Thomas[3], 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.*

14. 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 Rajesh[2]. 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 Verma[4] which we have reproduced hereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] 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."*

15. 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 Sethi[2] 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 Sethi[2]. 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

16. 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 18.04.2007 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3746/-
2	Future prospects @ 40%	Rs.936.5 rounded of 937 (25% of 3746)
3	Deduction towards personal expenditure	Rs.1170.75 rounded of Rs.1171/- [1/4 of (3746+937)]
4.	Total Income	Rs.3512/- (4683-1171)
4	Multiplier	14
5	Annual Dependency	Rs.5,90,016/-(3512 x 12 x 14)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- x 3 Spousal : Rs. 48,000/-x 1 Filial :	Rs.1,92,000/-
	Total Compensation	**Rs.8,18,016/-**
	Amount Awarded by the Tribunal	**Rs.3,39,000/-**
	Enhanced amount	**Rs.4,79,016/-**

17. 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 Nandu State Transport Corporation***

(2022) 5 Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The respondents No.1 and 2 are directed to deposit the enhanced amount of compensation equally alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the accounts of all the claimants/appellants as per award dated 18.04.2007. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

19. Before parting with the judgment, this Court extends its appreciation to Mr.Lalit Garg, Advocate, for his able assistance to the Court in the present matter.

20. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 02, 2024
G.Arora/sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes