IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

225 **FAO-4512-2007 (O&M)**
Date of Decision: September 20, 2024

Sunita Devi and others **......Appellant(s)**

Vs.

Jagtar @ Omkar @ Onkar and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rakshit Gupta, Advocate
for the appellant.

Ms. Kamlesh, Advocate for
Mr. Parminder Singh, Advocate
for respondent No.1 and 2.

Mr. Paul. S. Saini, Advocate
for Insurance company

SUDEEPTI SHARMA J. (ORAL)

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

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, 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.

3. On the asking of the Court, Mr. Paul S. Saini, Advocate accepts notice on behalf of respondent No.3-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. Paul S. Saini, 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. Paul S. Saini, Advocate, the counsel engaged by this Court in the present case.

FAO-4512-2007 (O&M)

1. The present appeal has been preferred against the award dated 26.09.2007 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 27.2.2006, Birbal (since deceased) alongwith one Nazir had loaded some iron articles on his truck from Pune which were to be delivered at Lalru and Amloh (Pb.). Birbal was not having a route permit for the State of Punjab. So they had gone to Sohal Transport, Ambala on 4.3.2006 and asked the proprietor to arrange two vehicles for transporting the goods to Punjab. They had also hired a crane bearing No. HR-45-7912 for transferring the heavy iron articles from one truck to the other. The said crane was being operated by

respondent Jagtar @ Omkar @ Onkar-respondent No.1. When the goods were being transferred from one truck to the other by the crane, the crane had come into contact with electric lines which were passing over the said place. So a current had flowed through the crane. Birbal who was assisting in unloading of the goods, had come into contact with the said crane and got electrocuted. He was shifted to Government Hospital, Ambala, where he was declared brought dead. The dead body was taken to the village of Birbal without getting a post mortem examination and it was cremated on 5.3.2006. The owner of the crane had assured to compensate the family of the deceased Birbal. The driver and owner of the crane lingered on the matter and at last the claimants had gone to the office of S.P. Ambala and moved an application which was forwarded to the police station and thereafter this FIR was got registered.

3. Notice of the claim petition was sent to the respondents. Respondents have appeared. Respondents No.1 & 2 filed their joint written statement, whereas respondents No.3 and 4 filed their separate written statements.

4. Respondents No.1 & 2 in their written statement, have pleaded that no such incident involving crane in question, has ever taken place. It was further pleaded that respondent No.1 has been falsely challaned in the criminal case at the instance of claimants only to obtain compensation.

5. Respondent No.3 in its written statement has also denied the incident with the involvement of crane in question. It was further pleaded that the present claim petition has been filed by the claimants on false averments and in collusion with respondents No.1 & 2, so insurance company cannot be held liable to pay any compensation.

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

> *1) Whether Birbal had died in an accident arising out of the use of a motor vehicle i.e. crane No. HR-45-7912 ?OPP.*
>
> *2) If issue No.1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom?OPP*
>
> *3) Whether there has been any violation of the terms and conditions of the insurance policy, if so to what effect ? OPR-3*
>
> *4) Relief*

7. 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 LEARNED COUNSELS FOR THE PARTIES

8. Learned counsel for the appellants contends that the claim petition was dismissed only on the ground that FIR was lodged after 27 days of the incident. Further, it was dismissed on the ground that petition is filed under Section 163-A of the Act and the income of the claimant is Rs.10,000/- per month.

i) He further contends that when it was pleaded in the petition that the deceased was earning Rs.10,000/- per month and thereafter an application was moved for amending the same to Rs.3000/- per month but the Ld. Tribunal did not consider the application and dismissed the claim petition on this ground as well that the claim petition under Section 163-A of the Act cannot be entertained, if the income is more than Rs.40,000/- per annum. Therefore, he prays that present appeal be allowed and compensation be granted to the appellants/claimants.

9. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that claim petition has rightly been dismissed. Therefore, he prays for dismissal of the appeal.

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

11. The only requirement for grant of compensation under Section 163-A of the Act is the involvement of the vehicle.

12. A perusal of record shows that FIR was got registered. Respondents No.1 & 2 admitted the factum of challan in the criminal case in the reply against them.

13. Ahlmad-Harvinder Singh, who was examined as PW-2. He brought the record of the FIR No.77 dated 31.3.2006 and proved copy of the final report as Ex.P2 and copy of the crime detailed report as Ex.P-3.

14. Nazir was examined as PW-6 who in his evidence admitted that he is the cousin of Birbal (since deceased) and was accompanying Birbal on the truck and they had loaded some iron articles on his truck from Pune which were to be delivered at Lalru and Amloh (Pb.). Birbal was not having a route permit for the State of Punjab. So they had gone to Sohal Transport, Ambala on 4.3.2006 and asked the proprietor to arrange two vehicles for transporting the goods to Punjab. They had also hired a crane bearing No. HR-45-7912 for transferring the heavy iron articles from one truck to the other. Thereafter, he narrated the whole accident of electrocution. He further stated that the owner of

the crane ensured to compensate the family of the deceased-Birbal. Therefore, they did not lodge any FIR but when the owner of the crane linger on the matter, then the claimants moved an application in the office of SP, Ambala, and thereafter, FIR was got registered.

15. Sahzada was examined as PW-5 who deposed that he was working as Clerk/Munim with Sohal Transport Company, Ambala and further admitted that on 4.3.2006, Birbal and Nazir had come to their office to hire two vehicles for transporting heavy iron articles. They also requested for a crane for transferring the iron articles from one truck to another and also requested for a crane for transferring the iron articles from one truck to another. He further submitted that thereafter, he arranged for a crane No. HR-45-7912 which was owned by Manoj Arora of Kamal Crane Services, Ambala. Thereafter, he stated that when the said crane was transferring the goods from one truck to another, then on account of rashness and negligence of the crane's driver, the crane had come into contact with electric lines which were passing over the said place and as a result the current had passed through the crane and Birbal who was assisting in the said operation, had got electrocuted. Birbal was shifted to the Government Hospital, Ambala, where he was declared dead.

16. Dr. Rajinder Rai from Government Hospital, Ambala City was examined as PW-4, who deposed that on 4.3.2006, he was on night duty. At about 9.00 p.m. the dead body of Birbal was brought to the Government Hospital by his brother Nazir. On examination, it was found to be a case of electrocution. He further proved photostat copy of an entry made in the emergency OPD register as Ex.P.7. He also proved the opinion Ex.P.4/B which was given by him on the police application.

17. Ajmer Singh, ASI, was examined as PW-3, who was Investigation Officer of the criminal case pertaining to the accident. He deposed that FIR No.77 dated 31.3.2006 was registered on the basis of complaint Ex.P.5 which was received from S.P. Ambala. As per his investigation, the accident took place on account of rashness and negligence of the crane driver namely Onkar.

18. A bare reading of the deposition of above referred to witnesses show that the factum of accident is proved and even the involvement of the vehicle is proved. Therefore, the finding of the Ld. Tribunal is not acceptable to this Court.

19. So far as the income part is concerned, the claimant had moved an application by stating that there was typographical mistake in the income of the deceased and the income was actually Rs.3000/- per month which was written as Rs.10,000/- per month and therefore, the figure Rs.10,000/- be read as Rs.3000/- per month. The rejection of the same by the Ld. Tribunal is also not acceptable to this Court since as already held by this Court in ***FAO No.195 of 2006***, titled as ***"Mamta and others Vs. Happy and others", 2024 PHHC 083673*** that the judicial officer should apply their judicial mind while dismissing the claim petition.

20. In view of the evidence as referred to above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellants-claimants.

21. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 26.09.2007 passed by Ld. Tribunal, Kaithal stands vitiated by a complete absence of application of judicial mind.

<u>SETTLED LAW ON COMPENSATION</u>

22. Hon'ble Supreme Court in the case of ***<u>Sarla Verma Vs. Delhi Transport Corporation and Another</u>*** **[(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.

23. 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."*

24. 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

25. 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 26.09.2007 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3000/-
2	Deduction towards personal expenditure 1/3rd	Rs.1000 (1/3rd of 3000)
3.	Total Income	Rs.2000/-
4	Multiplier	15
5	Annual Dependency	Rs.3,60,000/-(2000 X 12 X15)
6	Loss of Estate	Rs.18000/-
7	Funeral Expenses	Rs.18000/-
8	Loss of Consortium Parental : Rs.48,000/- X 2 Spousal : Rs. 48,000/- X 1 Filial : Rs. 48,000/- X 2	Rs.2,40,000/-
	Total Compensation	**Rs.6,36,000/-**

26. 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 appellant-claimant is granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

27. The Insurance Company is directed to deposit the awarded amount of compensation alongwith 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 the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

28. Before parting with the judgment, this Court extends its appreciation to Mr.Paul S. Saini, Advocate, for his able assistance to the Court in the present matter.

29. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 20, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes