IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

222 **FAO-3384-2006 (O&M)**
Date of Decision: September 06, 2024

Putul Ghosh **......Appellant**

Vs.

Hari Ram and others **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vishal Gupta, Advocate and
Mr. Abhishek Sharma, Advocate
for the appellant.

Mr. R.C. Gupta, Advocate
for respondent No.2.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 03.02.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rupnagar (for short, 'the Tribunal') for grant of compensation as well as for enhancement of compensation granted to other claimants and denied to appellant/claimant, who is niece of the deceased.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 09.03.2002, claimant-Putul Ghosh (who is niece of the deceased-Chandi Charan Ghosh) alongwith other persons was going from Chandigarh towards Manali in Tata Sumo bearing Registration No.HP-01 H-2506. At about 11:00 p.m. when they reached in the area of village Dadhi on Ropar-Anandpur Sahib Road, a truck bearing Registration No.HP-24 4127 (hereinafter referred as offending vehicle) driven by

respondent No.1 came from the opposite direction in rash and negligent manner and struck against the Tata Sumo. Due to this impact, claimant and other occupants of Tata Sumo sustained injuries and some of the occupants died at the spot. The claimant-Putal Ghosh was taken to Civil Hospital Anandpur Sahib from where she was referred to PGI, Chandigarh where she remained admitted as indoor patient. The claimant suffered permanent disability due to this accident and more than Rs.1 lac has been spent on the treatment. FIR No.43 dated 09.03.2002 was got registered in police station Sadar Ropar regarding this accident against the driver of the offending vehicle.

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

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

> 1. Whether Parasanta Kumar, Tapan Kumar, Subal Dass, Kamal Kumar Dass, Shakti Pada Maity, Sukumar Majumdar and Chandan Ghosh received injuries and Chittranjan Biswas, Sheikh Kenar Ali, Manab Dass Chandi Charan Ghosh, died in a motor vehicle accident which was caused by respondent no.1, Hari Ram while driving truck No.HP-24- 4127, in a rash and negligent manner on 9/3/2002, at about 11 p.m. in the area of village Dadhi? OPA.
>
> 2. Whether respondent no.1 was not holding a valid and effective driving licence, at the time of accident? If so, its effect ? OPR.
>
> 3. Whether the claimants are entitled to compensation, if any. If so, to what extent and from whom? OPA.

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.2,14,080/- alongwith interest @ 6% per annum to the other claimants (Kanai Lal Ghosh) and (Nirupam Ghosh). However, appellant/claimant (Putul Ghosh) was not held entitled for any compensation on the ground that she was married and not dependent on the income of the deceased. Hence the claimant/appellant filed the present appeal for grant of compensation as well as for enhancement of compensation awarded to the other claimants by the Tribunal.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimant-appellant contends that the claim of the appellant/claimant-Putul Ghosh (niece of the deceased) was denied only on the ground that she was married and it cannot be said that she was dependent on the income of the deceased-Chandi Charan Ghosh. He further contends that

i) the compensation awarded to the other claimants i.e. Kanai Lal Ghosh and Nirupam Ghosh, was on the lower side.

ii) that learned Tribunal has erroneously taken the income of deceased as Rs.5350/- per month.

iii) the learned Tribunal erroneously applied multiplier of 10 instead of 13.

iv) no amount was granted for future prospects, loss of estate and for consortium.

v) the amount awarded for funeral expenses is also on lower side.

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

7. *Per contra*, learned counsel for the respondent No.2-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.

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

9. A perusal of the award indicates that the Tribunal has erred while dismissing the claim of the appellant/claimant solely on the ground that she has been married and was not dependent on the income of the deceased-Chandi Charan Ghosh. However, the said finding of the Ld. Tribunal is against the law laid down by the Hon'ble Apex Court in the judgment of **National Insurance Company Limited Vs. Birender and others, 2020 (3) RLW 1892.** The relevant paras of the same are reproduced as under:-

> *"14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus: "9. In terms of clause (c) of subsection (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.*

10. .....The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhathai [(1987) 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child." In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then, it was observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision *would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.*

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

10. In view of the judgment referred to above, the appellant-claimant is entitled to grant of compensation.

The Ld. Tribunal has rightly assessed the monthly income of the deceased as Rs.5350/-. However, the Tribunal had applied a multiplier of 10 instead of 13. It is further revealed that the learned Tribunal has not granted future prospects as per the settled law and no amount was granted for loss of estate and consortium. Further, the funeral expenses granted by the Ld. Tribunal is also on lower side. Therefore, the award requires interference of this Court.

SETTLED LAW ON COMPENSATION

11. 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.

12. 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."*

13. 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

14. In view of the law laid down by Hon'ble the Supreme Court in the above referred to judgments, the present appeal is allowed and the award dated 03.02.2006 is set aside to the extend of dis-allowing the claim of claimant/appellant-Putul Ghosh solely on the ground that she was married and it cannot be said that she was dependent on the income of the deceased-Chandi Charan Ghosh. In view of law laid down by Hon'ble the Supreme Court, the amount awarded by Ld. Tribunal deserves to be enhanced and modified accordingly. The appellant-claimant is entitled to the compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5350/-
2	Future prospects @ 30%	Rs.1605/- (30% of 5350)
3	Deduction towards personal expenditure	Rs.2318/- (1/3rd of 6955)
4.	Total Income	Rs.4637/-
4	Multiplier	13
5	Annual Dependency	Rs.7,23,372/- (4637 x 12 x13)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium	Rs.1,44,000/-

	Total Compensation	**Rs.9,03,372/-**
	Amount Awarded by the Tribunal	**Rs.2,14,080/-**
	Enhanced amount	**Rs.6,89,292/-**

15. 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.

16. The respondent No.2 is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. Since the other claimants (Kanai Lal Ghosh and Nirupam Ghosh) have already received Rs.2,14,080/- equally, which was rather to be distributed amongst the three claimants (Kanai Lal Ghosh, Nirupam Ghosh and Putul Ghosh) as per the law laid down by Hon'ble the Supreme Court. The Ld. Tribunal is hereby directed to disburse 1/3rd of the amount of Rs.2,14,080/- to the appellant/claimant (Putul Ghosh) from the enhanced amount. The remaining enhanced amount shall be disbursed equally among the claimants and the appellant/claimant. The claimant/appellant is directed to furnish her bank account details alongwith the bank account details of the other claimants to the Tribunal.

17. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 06, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes