



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

206

FAO-3507-2006 (O&M)

Date of Decision: September 05, 2024

Karamjit Kaur and others

.....Appellant(s)

Vs.

Kashmir Singh and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. R.C.Kapoor Advocate
for the respondent-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 01.12.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1989 by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 25.04.2003, deceased-Sita Ram was going from village Gholu Majra to Jawarharpur on foot. When he was standing at Bus Stop Gholu Majra on the kacha berm at the left side of the road and was waiting to get the road clear for going to his village then at about 8 p.m. a truck bearing registration No.PUR-9517 driven by respondent No.1 in a rash and negligent manner came from Ambala side and hit the deceased-Sita Ram by going the extreme left side of the road on *kacha* berm. As a result of the accident, deceased-Sita Ram sustained multiple injuries and died at the spot. An



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FIR No.48 dated 25.04.2003, under Sections 279 and 304-A IPC was registered at Police Station Lalru qua this accident.

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 Sita Ram died due to rash and negligent driving of the truck No. PUR-9517 by respondent no. 1? OPP*
- 2) *Whether the claimants are legal heirs of Sita Ram, deceased? OPP*
- 3) *Whether respondent No. 1 was not holding a valid driving license? OPR-3*
- 4) *To what amount the claimants are entitled and from whom? OPP*
- 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

6. The learned counsel for the appellants-claimants contends that the claim petition was dismissed on the ground that there is a delay of 1 day in lodging the F.I.R. He further contends that even after the proven of accident, the claim petition filed by the appellants/claimants was dismissed. Therefore, he prays that present appeal be allowed.

7. *Per contra*, learned counsel for the respondents, however, vehemently argues that the award has rightly been passed and the Tribunal had rightly dismissed the claim petition.



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

9. The relevant portion of the award dated 01.12.2005 is reproduced as under:-

“9. To prove the accident, claimants have examined Prem Chand, eye witness of the occurrence, PW3, who filed his affidavit in his examination-in-chief, Ex. A5. He has stated in his examination-in-chief that on 25.04.2003, when he along-with Sita Ram were to go from Jawaharpur to Kohlemajra to inquire about the Chaff and were coming to village Kohlemajra from Jawaharpur at about 8 p.m. they were standing on the bus stand of Kohlemajra on their left hand. A truck came from village Dappar side, rashly and negligently and hit Sita Ram from behind. The truck was coming from Ambala to Chandigarh side. Sita Ram is the cousin of Prem Chand. Sita Ram was dragged to a distance of 15/20 steps and died at the spot. He then gave the number of the truck and stated that he informed the passers-by to inform in his village. After some time, some more people came there from village Jawaharpur. He left them with the dead body of Sita Ram and approached the police, which met him at bus stand of village Dappar. He identified the truck driver and came to know about his name from the Conductor as Kashmir Singh. After some days, he was called to police station, where he identified the driver. During cross examination, he stated that the truck was loaded one. He had disclosed this fact to the police. His statement was recorded by the police on 26.01.2003. In addition to this, copy of the FIR, Ex.A6, has been produced, in which it is stated that the truck came from Dappar side and hit Sita Ram and Sita Ram died at the spot. The factum regarding Sita Ram being dragged to 15/20 steps, is missing. It is stated that the number of the truck was PUR-9517. The accident took place on 25.04.2003 at 8 p.m. and the DDR was recorded on



26.04.2003 at 8.45. a.m. Now the question is as to whether the involvement of the truck is proved. If a general at the FIR and statement of Prem Chand is made, it would indicate the involvement of the truck. However, the learned counsel for the Insurance Company has pointed out that Prem Chand has given some other story. The FIR was lodged on 26.04.2003 at 8.45 am. Though the delay in the FIR is not material, but it is allege that it was to find out a suitable truck to be planted in the present case. Kashmir Singh and Kamal Singh, respondents, are the real brothers and both of them are the co-owners of the truck, as per registration certificate. The truck belongs to a village in P.S. Anandpur, District Ropar, Kashmir Singh got his driving license form Hoshiarpur. The insurance, Ex. R4 was obtained from Mehatpur in Himachal Pradesh. However, in order to determine whether the accident took place with the truck, as alleged, the post mortem report is very useful. From the FIR, it is made out to be a case of simple accident that when the truck hit Sita Ram, who fell down and died. However, the post mortem report, Ex.A9, which can be clearly read with some efforts, shows the injury on the dead body of Sita Ram. Whole of the right side of the chest and right arm was crushed and broken. The piece of ribs were broken. The flap of the skin was raised. Both the lungs were lacerated. Multiple multi sized abrasions on the right side of abdomen. Heap of intestines were protruding out side through the wound under the scricum. The skull was also found fractured from the right parietal bone. The parts under the same were also found lacerated. It shows that the head, chest abdomen of the deceased were completely crushed. His ribs were crushed to pieces and intestines were coming out. It shows that Sita Ram was run over by more than one vehicle, as in case he was run over by one vehicle, it will pass either through the chest abdomen of head. The width of the tyre is not such so as to cover the entire body from head to the lower part below the abdomen. It also



falsifies his version regarding the involvement of truck no. PUR-9517 in the accident and even the presence of Prem Chand at the spot. Here the delay becomes material. The delay shows that the claimants came to know about the accident later on and that some unknown vehicles were involved and I find weight in the arguments of counsel for respondent no. 3 that the present truck was later on but forwarded to claim the compensation.

10. Learned counsel for the claimants has vehemently argued that respondent no. 1 is being tried by the criminal court and that no body will come forward to face the trial, as he can be convicted and sentenced. For this purpose, copy of challan Ex.A7 and charge sheet, Ex.A8 have been relied upon. I find that there is no evidence that in the said case, the eye witness Prem Chand deposed against Kashmir Singh. Therefore, it looks like a friendly match, where the claimant have joined hands with respondents no. 1 and 2 to claim the compensation from the insurance company. Though Sita Ram apparently was run over by more than one vehicle, which are apparently unknown and the present vehicle was put forwarded later on to claim the compensation.

11. The learned counsel for the claimants has relied upon authority titled as Harbans Lal versus Nazar Singh, 2002(2) Accident Compensation Judicial Report, 228, of our own Hon'ble High Court to press that the delay is not material. I find that normally the delay; is not material, but when there are allegations that the parties have joined hands and put forwarded a truck to claim the compensation illegally from the insurance company, the delay can be considered.

12. In view of the foregoing discussions, I hold that Sita Ram did not die due to rash and negligent driving of truck no. PUR-9517 by respondent no. 1. This issue is decided against the claimants and in favour of the respondents. ”

10. A perusal of the award shows that Prem Chand was eye witness

who was examined as PW-3 who narrated the whole incident of accident. Even

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the number of the truck was noted down by him. The incident took place on 25.04.2003 and FIR was lodged on 26.04.2003. The Ld. Tribubal has rejected the claim on the flimsy ground that the factum regarding deceased (Sita Ram) being dragged to 15/20 steps is missing. Further, the delay of 01 day in lodging the FIR is also one of the reasons for rejecting the claim of the claimants.

11. The post mortem report shows that there were multiple injuries on the dead body of Sita Ram (deceased). Whole of the right side of the chest and right arm was crushed and were broken. The pieces of ribs were broken. The flap of the skin was raised. Both the lungs were lacerated. Multiple multi sized abrasions were on the right side of abdomen. Heap of intestines were on protruding out side through the wound under the scricum. The skull was found fractured from the right parietal bond. The parts under the same were also found lacerated. It shows that the head, chest, abdomen of the deceased-Sita Ram were completely crushed. His ribs were crushed to pieces and intestines were coming out.

12. The Ld. Tribunal has committed grave error in presuming after the appreciation of post mortem report that Sita Ram deceased was run over by more than one vehicle since if he was run over by one vehicle, it would pass either through chest, abdomen of head and the width of the tyre is not such so as to cover the entire body below the abdomen, and therefore held that truck No.PUR-9517 is not involved in the accident. Presence of eye witness-Prem Chand is also held to be doubtful by the Ld. Tribunal whereas his statement and cross examination proves the case of the appellants/claimants.

13. The whole record of the case proves the factum of accident which includes the post mortem report. Further the evidence of eye witness Prem Chand-PW3 proves the factum of accident. Still the claim of the



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appellants/claimants has been denied on the flimsy grounds. This Court in case titled as '**Mamta and others Vs. Happy and others**' bearing FAO No.195 of 2006 held as under:-

“5.The Judge should not go into the technicalities of the provisions, specially in motor vehicle cases, under which the application or petition is moved but should apply his judicial mind, since these are only the irregularities and not illegalities which cannot be cured. The Hon’ble Supreme Court in the above mentioned judgments have analysed that the Court should make every effort to fill the loss of the victims/legal-representatives/claimants/relationship. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically.

6. Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary. ”

14. So far as the delay of 01 day in lodging the FIR is concerned, Hon’ble Supreme Court has settled the law in the case of **Ravi Vs. Badrinarayan and others, 2011(4) SCC 693**, wherein it has been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they



give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

15. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 01.12.2005 passed by Ld. Tribunal, Patiala stands vitiated by a complete absence of judicial application of mind.



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SETTLED LAW ON COMPENSATION

16. Since the deceased was working as Peon in the office of Director State Transport, Punjab, Chandigarh and according to salary certificate issued by the department, the last drawn salary of the deceased was Rs.7935/-, therefore, the income of the deceased is assessed as Rs.7935/-.

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.

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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.

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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)**



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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 01.12.2005 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.7935/-
2	Future prospects @ 30%	Rs.2380/-(30% of Rs.7935/-)
3	Deduction towards personal expenditure 1/4	Rs.2578/- [1/4 of (7935+2380)]



4.	Total Income	Rs.7737/-
4	Multiplier	14
5	Annual Dependency	Rs.12,99,816 (7737 x 12 x 14)
6	Loss of Estate	18000
7	Funeral Expenses	18000
8	Loss of Consortium Parental : Rs.48,000/- x 3 Spousal : Rs. 48,000/-x 1 Filial :	Rs.1,92,000/-
	Total Compensation	Rs.15,27,816/-

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 Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the compensation 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 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.

23. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 05, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes