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

**224** **FAO-612-2007 (O&M)**
**Date of Decision: August 30,** 2024

**Paramjit Kaur and others** **......Appellant(s)**

**Vs.**

**United India Insurance Company and others** **......Respondent(s)**

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Anupam Singla, Advocate and
Ms. Deepika Bagri, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for respondent No.1-Ins. Company

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**SUDEEPTI SHARMA J. (ORAL)**

1. The present appeal has been preferred against the award dated 10.11.2006 passed by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') vide which the claim petition filed by the claimants-appellants under Section 163-A of the Motor Vehicles Act, 1988 on account of death of Darshan Singh in road accident, was dismissed.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case are that on 5.11.2004, deceased Darshan Singh alongwith Roshan Lal alias Roshan Singh son of Garib Dass went on his motorcycle TVS Victor bearing temporary registration No.PB-11-Temp-H-Q-3125 to meet their relation in village Tohra, P.S. Bhadson. The motorcycle was being driven by Roshan Lal. When they were returning back to village Dhamoli of Roshan Lal and reached near grain market of village Pabri at about 9:00 p.m.,

then due to high beam lights of truck coming from front side, the driver Roshan Lal could not control the motorcycle while trying to bring it to one side of the road and resultantly the motorcycle fell in the pits and both the riders fell on the road. As a result of the accident, Darshan Singh sustained injuries on his head, whereas Roshan Lal received injuries in the abdomen. Both the injured were removed to Civil Hospital Rajpura but Darshan Singh succumbed to the injuries in the way. Roshan Lal remained admitted in AP Jain Civil Hospital, Rajpura but died on the next day. Before death Roshan Lal made statement to the police that he was driving the motorcycle. The death of Darshan Singh took place due to use of motorcycle TVS Victor owned by the deceased Darshan Singh.

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

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

> *1. Whether Darshan Singh died in motor accident which occurred due to use of motorcycle No. PB-11/Temp/H-Q-3125 with Chasis No. MD 625 AF IX 41K03616 and Engine No. OFIK 41258164 on 5.11.2004 in the area of village Pabri? OPA*
>
> *2. Whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP*
>
> *3. Whether driver of offending vehicle was not holding a valid driving licence at the time of accident?OPR-3*
>
> *4. Whether the petition is not maintainable? OPR-3*
>
> *4A. Whether the claimants and respondent No.1 are in collusion with each other? OPR-3*
>
> *5. Relief.*

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

**SUBMISSIONS OF THE COUNSELS**

6. The learned counsel for the appellants-claimants contends that the claim petition was dismissed on the sole ground that in the claim petition, the monthly income of the claimants/appellants was shown as Rs.6784/- per month and the claim petition is not maintainable since the salary of the deceased was more than Rs.40,000 per annum. He further submits that the Tribunal has ignored the statement dated 14.02.2006 of appellant's wife, wherein she stated that the income of deceased may be treated as Rs.40,000/- per annum as required under Section 163-A in the interest of claimants. Therefore, he prays that present appeal be allowed.

7. *Per contra*, learned counsel for the respondents, however, vehemently argues that the claim petition had rightly been dismissed by Ld. Tribunal. He prays for dismissing of appeal.

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 10.11.2006 is reproduced as under:-

> ***ISSUE NO. 2***
>
> *9. As held above in issue No. 1, Darshan Singh died in motor accident occurred out of the use of motor vehicle i.e motor cycle bearing temporary registration No. PB-11/TEMP/H-Q-3125 with Chasis No. MD 625 AF IX 41k03616 and Engine No. OFIK 41258164, belonging to deceased Darshan Singh, on 5.11.2004, therefore, the petition under Section 163-A of the Motor Vehicles Act for compensation is maintainable. However, the claimants have*

*produced on record the salary certificate of deceased Darshan Singh Mark A. There is also statement on oath of claimant Paramjit Kaur PW 1 that her husband Darshan Singh was employed as Constable in Punjab Police (IRB) P.A.P. at the time of his death in this accident and he was earning about Rs. 15,000/- per month. As per the salary/pay certificate of deceased Darshan Singh Constable No. 6/546, his gross salary for the month of 10/2004 was Rs. 7874/- and after deductions he was getting net pay of Rs. 6784/-. If we bifurcate his salary, he was getting the following pay:-*

| | | |
|---|---|---|
| *(1)* | *Substantive/Basic Pay* | *Rs. 3550/-* |
| *(2)* | *D.P.* | *Rs.1775/-* |
| *(3)* | *Dearness allowance* | *Rs. 746/-* |
| *(4)* | *Compensatory Pay* | *Rs. 506/-* |
| | *Total:* | *Rs.6577/-* |

*Whereas the other allowances were being paid to Darshan Singh as reimbursement of expenses already incurred by him in the form of ration allowance, fixed medical allowarice, etc. So, his net pay was Rs. 6577/- per month i e. Rs. 78,924/- per annum. Whereas petition under Section 163-A of the Motor Vehicles Act is not maintainable if the income of the deceased was more than Rs. 40,000/- per annum. No doubt, the counsel for the claimants got recorded his statement that the income of deceased Darshan Singh may be treated as Rs. 40,000/- per annum in order to bring his case under Section 163-A of the Motor Vehicle Act, but this plea of the counsel for the claimants is not maintainable because the provisions of Section 163-A of the Motor Vehicles Act is a social legislation meant to protect the poor person and if in order to bring the case of every person under Section 163-A of the Motor Vehicle Act, he is allowed to say that his income be treated as Rs. 40,000/- or less, the very purpose of this legislation shall be frustrated. The petitioners could not produce any law or ruling in this regard that he may be allowed to say that his income be treated as Rs. 40,000/- or less per annum, whereas as per the petitioner's own version, the income of the deceased is not covered under section 163- A of the Motor Vehicles*

*Act and as such the claimants are not entitled to compensation under section 163-A of the Motor Vehicles Act.*

*10. Apart from this, the claimants have not come to the Court with clean hands. As per the claimants' version, deceased Darshan Singh was employed as Constable in Punjab Police, IRB Section, P.A.P. posted at Ladha Kothi, district Sangrur. At the time of his death, he was earning Rs. 15,000/- per month. After the death of Darshan Singh, the clairnants might have got death-cum-retirement gratuity and other retrial benefits in the form of G.I.S. (Group Insurance Scheme), G.P. fund, leave encashment, pension, etc. There may be possibility that one member of the family of Darshan Singh might have got employment in the police department on compassionate ground but the claimants did not disclose anything about the benefits the claimants have received from the police department where deceased Darshan Singn was employed. The claimants have also not disclosed whether deceased Darshan Singh was insured L.I.C. or with any other Insurance Company, whether the claimants have got compensation, if any, from that Insurance Company. When in the cross-examination she was asked the question about the benefits she has received from the police department on account of death of her husband Darshan Singh, P.W. 1 Paramjit Kaur could not give any satisfactory reply. She has rather stated that she has not received any amount from the police department. She has also not received any family pension from the police department. She could not produce any document to show that whether she has applied for dues of deceased Darshan Singh from the police department and for family pension or for service on compassionate ground. So, all this shows that the claimants have not come to the Court with clean hands. Moreover, the case of the claimants does not fall within the ambit of Section 163-A of the Motor Vehicles Act as the income of the deceased was about Rs. 80,000/- per annum arid the petitioner herself has deposed in the Court that her husband deceased Darshan Singh was getting salary of about Rs. 15,000/- per month which amounts to Rs. 1,80,000/- per annum,* *whereas the amnit of section 163-A of the Motor Vehicles Act is upto Rs. 40,000/- per annum. Therefore, I hold that the claimants are not entitled to any compensation on account of the death of Darshan Singh under Section 163-A of the Motor Vehicles Act. Resultantly, issue No. 2 is decided against the petitioners. "*

10. A perusal of the award dated 10.11.2006 shows that Ld. Tribunal while dismissing the claim petition stated that as per the salary certificate, the income of the deceased was shown to be Rs.6784/- per month. By taking his (deceased) earning to be Rs.6784/- per month, the annual income was calculated as Rs.81,408/- and since there is cap of Rs.40,000/- under Section 163-A, therefore, the claim petition of the claimants was dismissed. However, a perusal of the record further reveals that the claimant-Paramjit Kaur (wife of the deceased) specifically recorded her statement to the effect that the income of the deceased be please be treated as Rs.40,000/- per annum as required under Section 163-A in the interest of claimants. The same is reproduced as under:-

*"Statement of Shri Deep Chand Goel, Advocate for claimant.*

*Stated that the income of the deceased may please be treated as Rs. 40,000/- per annum, as required u/s 163-A in the interest of claimants."*

11. In view of the 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. Further, this Court vide judgment dated 17.05.2024 passed in FAO-407-2006, titled as ***Satpal Vs. Daljit Singh and others*** held as under:-

*"13 The claim petitions are drafted by the Advocates and it is standard practice to state the maximum earnings and amount of compensation in the pleadings. The Court/Tribunal should appreciate the evidence led on oath, rather than strictly*

*adhering to the pleadings. The present claim petition was dismissed solely on the stated earning of Rs.6,000/- in the pleadings, completely discarding the evidence presented. This indicates a manifest failure to apply judicial mind. Therefore, the present appeal is allowed. The appellant/claimant is granted compensation under Section 163-A by taking his income to be Rs.3,000/- per month."*

12. On the touchstone of hearinabove discussed findings and judicial precedent, the judgment dated 10.11.2006 passed by Ld. Tribunal, Patiala stands vitiated by a complete absence of judicial application of mind.

13. The appellants/claimants are entitled for grant of compensation under Section 163-A by taking the income of the deceased to be Rs.3,333/- per month.

**SETTLED LAW ON COMPENSATION**

14. 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.*

15. 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."*

16. 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**

17. 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 10.11.2006 is modified accordingly. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Monthly Income | Rs.3333/- |
| 2 | Deduction towards personal expenditure | Rs.1111/- [1/3rd of (3333)] |
| 4. | Total Income | Rs.2222/- (3333-1111) |
| 4 | Multiplier | 17 |
| 5 | Annual Dependency | Rs.4,53,288/-(2222 x 12 x 17) |
| 6 | Loss of Estate | Rs.18,000/- |
| 7 | Funeral Expenses | Rs.18,000/- |
| 8 | Loss of Consortium<br>Parental : Rs. 48,000/- x 1<br>Spousal : Rs. 48,000/-x 1<br>Filial : Rs. 48,000/-x 1 | Rs.1,44,000/- |
| | **Total Compensation** | **Rs.6,33,288/-** |

18. 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 amount from the date of filing of claim petition till the date of its realization.

19. The respondent No.1 is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from today. So far as share of amount of compensation is concerned, the appellant-claimant No.1 is entitled to receive the amount of compensation to the

extent of 60%, whereas, appellants/claimatns No.2 and 3 are entitled to receive the remaining amount of compensation in equal share. The Tribunal is further directed to disburse the amount of compensation alongwith interest as referred above in the accounts of all the claimants/appellants as appellant No. 2 seems to have attained the age of majority. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

20. Disposed off accordingly.

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

**(SUDEEPTI SHARMA)**
**JUDGE**

**August 30, 2024**
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes