IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

220 **FAO-772-2007 (O&M)**
Date of Decision: November 27, 2024

Neelam and others **......Appellants**

Vs.

Lakhbir Singh and another **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Nitish Garg, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent-Insurance Company

<u>SUDEEPTI SHARMA J. (ORAL)</u>

None has put in appearance on behalf of the Insurance Company.

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

3. Previously vide order dated 18.07.2024 passed 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, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

4. On the asking of the Court, Mr. Ravinder Arora, Advocate accepts notice on behalf of respondent-Insurance Company.

5. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent-Insurance Company-Mr. Ravinder Arora, Advocate.

FAO-772-2007 (O&M)

1. The present appeal has been preferred against the award dated 07.11.2006 passed in the claim petition filed under Sections 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Bathinda (for short, 'the Tribunal') for enhancement of compensation granted to the appellants/claimants to the tune of Rs.2,00,000/- alongwith interest at the rate of 6% per annum, on account of death of Babu Ram Sharma in a Motor Vehicular Accident, occurred on 27.2.2005.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 27.12.2005 Babu Ram Sharma (since deceased) alongwith his sons Kamal Sharma and Sushil Sharma were going from Bathinda city to their resident at Paras Ram Nagar, Bathinda on their bicycles on extreme left side of the road, At about 7;00 p.m., when they reached on main road of Paras Ram Nagar, Bathinda, near quarters in revenue limits of P.S. Kotwali, Bathinda, then a truck bearing registration No.PB-03-M-9437 coming from opposite side in rash and negligent manner lost control and struck against Babu Ram. As a result of which, he fell down on the road and received multiple injuries and later on expired.

SUBMISSIONS OF THE LD. COUNSELS FOR THE PARTIES

3. Therefore, Learned counsel for the appellants contends that the amount assessed by Ld. Tribunal is very lower side, therefore, he prays for the enhancement of the same.

4. *Per contra*, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award and contends that the amount of compensation as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

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

ANALYSIS OF THE RECORD

6. A perusal of the award shows that the claim petition was filed under Section 163-A of the Act but in the claim petition in the Column of cause of accident with brief description, it is stated that a truck No.PB-03-M-9437 was coming from opposite side which was being driven by its driver/respondent No.1 in a rash and negligent manner and became out of control and struck with Babu Ram (deceased). As a result of which, he fell down on the road and received multiple injuries on his person and died.

7. In the reply filed by respondent No.1, the factum of accident is admitted by him by stating therein that accident took place due to negligence of the deceased.

8. A perusal of the examination-in-chief by way of affidavit of Kamal Sharma wherein it is stated that respondent No.1 was driving the vehicle in a rash and negligent manner and his cross-examination, Kamal Sharma, who appeared as PW-1 again stated that it is incorrect to suggest that the driver of

the truck was not driving in a rash and negligent manner shows that accident took place due to rash and negligent driving is pleaded by the claimants. Even in the grounds of appeal before this Court, in the brief facts of the case, it has been stated that the accident took place due to rash and negligent driving of respondent No.1.

9. FIR No.766 dated 07.12.2005 at Police Station Kotwali, Bathinda, was registered. In the FIR (Ex.A-2), it is mentioned that a truck was driven in a rash and negligent manner. It is admitted fact in the reply filed by respondents No.1 and 2 that FIR was registered against respondent No.1 and he was facing trial. The whole narration in the FIR shows that the accident took place due to rash and negligent driving of respondent No.1 and FIR was registered under Section 304-A of IPC. Therefore, in view of the above, the present appeal should be considered under Section 166 of the Act.

10. Further this Court in FAO No.195 of 2006 titled as ***Mamta and others Vs. Happy and others*** has discussed in detail the power of the Appellate Court. The relevant portion of the same is reproduced as under:-

> *"26. The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.*
>
> *x x x x x*

28. The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section 163-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.

29. Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants. "

11. In view of the above referred to judgment, this Court converts the present claim petition from Section 163-A to 166 of the Motor Vehicles Act, 1988.

12. A perusal of the award reveals that the Ld. Tribunal has erred in assessing the income of the deceased-Babu Ram Sharma as Rs.2500/- per month. The deceased was Rickshaw Puller and under the prevailing facts of the present case, his income is to be assessed as Rs. 2900/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Punjab. He was 47 years of age at the time of the accident as per the post mortem report Ex.A-2.

ii) That multiplier of 13 should be applied instead of 10.

iii) That deduction towards personal expenditure should be 1/4th instead of 1/3rd.

iv) That no amount was granted towards future prospects, loss of estate, funeral expenses and loss of consortium. Therefore, it requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

13. Hon'ble Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation and Another*** **[(2009) 6 Supreme Court Cases 121]**, laid down the law on assessment of compensation and the relevant paras of the same are as under:-

> "***30***. *Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
>
> ***31***. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

* * * * * *

***42.** We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas[3], Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

14. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;
(B) Selection of multiplier depending on age of deceased;
(C) Age of deceased on basis for applying multiplier;
(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

"***52.*** *As far as the* ***conventional heads*** *are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs*

1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

***59.3**. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

***59.4**. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was*

between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
59.5. *For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma[4] which we have reproduced hereinbefore.*
59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] read with para 42 of that judgment.*
59.7. *The age of the deceased should be the basis for applying the multiplier.*
59.8. *Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

15. Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

*"**21**. A Constitution Bench of this Court in Pranay Sethi[2] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

> *21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*
> *21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*
>
> ***22**. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*
> ***23**. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*
> ***24**. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi[2]. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.*

RELIEF

16. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed and the award dated

07.11.2006 is modified accordingly. The appellants-claimants are entitled to the enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2900/-
2	Future prospects @ 25%	Rs.725/-(25% of 2800)
3	Deduction towards personal expenditure 1/4th	Rs.906/-(1/4th of 3625)
4.	Total Income	Rs.2719/-(3625-906)
5	Multiplier 13	Rs.35,347/-(2713X13)
6	Annual Dependency	Rs.4,24,164/-
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
9	Loss of Consortium Parental : Rs. 48,000/- x 3 Spousal : Rs. 48,000/- x 1 Filial :	Rs. 1,92,000/-
	Total Compensation	**Rs.6,52,164/-**
	Deduction **Amount Awarded by the Tribunal**	Rs.2,00,000/-
	Enhanced amount	**Rs.4,52,164/-** (6,52,164 -2,00,000)

17. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nadu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The respondent Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within

a period of two months from the receipt of copy of this judgment. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the account of the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

19. Before parting with the judgment, this Court extends its appreciation to Mr. Ravinder Arora, Advocate for his able assistance to the Court in the present matter. Further, the Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ravinder Arora, Advocate in pursuant to order dated 18.07.2024 passed in FAO-1682-2007 within a period of 10 days from the date of receipt of copy of this judgment.

20. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 27, 2024
sonia arora

Whether speaking/reasoned: Speaking
Whether reportable Yes / No