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

**208** **FAO-4317-2006 (O&M)**
**Date of Decision: October 16**, 2024

**Smt. Kaushalya Devi and others** **......Appellants**

**Vs.**

**Jagtar Singh and another** **......Respondents**

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

Present: Mr. Rajesh Sethi, Advocate
Ms. Preeti Bansal, Advocate and
Mr. Anshuman Sethi, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for the respondent-Insurance Company.

----

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

This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.

2. 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, this Court would request the counsel empanelled with the Insurance Company, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On the asking of the Court, Mr. Suvir Dewan, Advocate accepts notice on behalf of respondent No.2-Insurance Company.

4. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent Insurance Company-Mr. Suvir Dewan, Advocate.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

**FAO-4317-2006**

1. The present appeal has been preferred against the award dated 23.05.2006 passed in the claim petition filed under Sections 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Fatehabad (for short, 'the Tribunal') for setting aside the finding of the Tribunal regarding contributory negligence as well as for enhancement of compensation granted to the appellants/claimants, who are the family members of the deceased-Het Ram.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case are that on 11.5.2004 at about 9-30 a.m., Het Ram was going to the petrol pump of M/s. Khushi Ram Parma Nand for getting the tank of the scooter filled. When he was crossing the road, a Hero Honda motor cycle bearing registration No. HR-59-2561 came from Sirsa side at a very fast speed being driven rashly and negligently by Jagtar Singh. He could not control the motor cycle and hit the scooter. As a result of which both Jagtar Singh and Het Ram fell down and received multiple injuries. Both of them were taken to Pehwa Hospital, Fatehabad. Keeping in view the

seriousness of the injuries received by Het Ram, he was referred to Hisar. He succumbed to the injuries on his way to Hisar.

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 the accident in question has taken place on account of rash and negligent driving of vehicle No. HR-59/2561?OPP*
*2. Whether the petitioners are entitled to compensation ? If so, to what extent and from whom? OPP*
*3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident ? if so, to what effect? OPR2.*
*4. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.4,29,000/-. However, Ld, Tribunal further held that the case involved contributory negligence, attributing 50 % liability to the deceased. Consequently, the claimants were awarded compensation of Rs.2,21,500/- Hence, the claimants/appellants filed the present appeal for seeking enhancement of the compensation and challenging the finding regarding contributory negligence.

**<u>SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES</u>**

6. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side. He further contends that the Ld. Tribunal has erred in holding accident in question as of a

contributory negligence. However, there was no evidence on record to suggest that Het Ram was negligent in any manner. He further contends:-

i) That no amount was granted for future prospects and loss of estate.

ii) That the amount awarded for loss of consortium and funeral expenses is also on lower side. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

7. *Per contra*, learned counsel for the respondents, 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.

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

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

> "1*2. Ved Parkash, Ahlmad (PW-1) brought the summoned record of case titled State vs. Jagtar Singh arising out of FIR No.241 dated 11.5.2004. He has placed on record certified copy of FIR Ex.Pl and copy of report under section 173 Cr.P.C. Ex. P2. From the report under section 173 Cr.P.C. it is apparent that Jagtar Singh is facing trial regarding this accident and during police investigation, he was found at fault.*
>
> *13. It has been argued vehemently by the learned counsel for the respondents that as per the admitted case of the petitioners, the accident took place while Het Ram was crossing the road. So, according to the learned counsel, it was the duty of Het Ram to be cautious and to on both the sides of the road. Het Ram failed to do look so. Further more, according to the learned counsel, Het Ram was not wearing any helmet, which is violation of the traffic rules.*
>
> *14. No doubt, the accident had taken place while Het Ram was*

*crossing the road. However, from the statement of Subhash Chand, it is apparent that Jagtar Singh at a high speed and in rash and negligent manner. The accident had taken place at a very busy place in the town and it was expected from Jagtar Singh to drive the motor cycle at such a speed that he could control the motor cycle and could stop the motor cycle as and when required. The mere fact that Jagtar Singh could not stop the motor cycle when the scooter bearing registration No. HR-22-B-8635 appeared on the road proves that he was rash and negligent.*

*15. On the other hand, Het Ram, driver of the scooter bearing registration No.HR-22B-6635 is also at fault as the scooter was not under his control. Had the scooter been in his control, he could have applied the brakes and the accident could have been avoided. In these circumstances. the accident took place due to the contributory negligence of both the drivers i.e. Jagtar Singh and Het Ram deceased and both of them are responsible equally for causing the above said accident. Hence, this issue is decided accordingly.*

*16. Smt. Kaushlalya Devi (PW-2) has tendered her affidavit Ex.P3 wherein she has deposed that Het Ram was her husband and he was 52 years old at the time of accident. He died in a motor vehicular accident on 11.5.2004. She has further deposed that at the time of death, Het Ram was proprietor of firm M/s. Het Ram Sajjan Kumar and was commission agent. He was running his business from shop No.5, Anaj Mandi, Fatehabad and he used to earn Rs.70,000/ 75,000/- p.a. He was an income tax assessee and his permanent account No. is AALPN1302M."*

10. A perusal of the award indicates that in my considered view, the reasoning given by the Ld. Tribunal is inherently flawed. The mere fact that the deceased riding a motorcycle without wearing a helmet does not, in itself, constitute contributory negligence. At best, it constitutes a breach of statutory

duty rendering the deceased liable for non-compliance with the law, but it does not in itself, thereby a direct casual occasion to the resultant harm. Therefore, the act of operating a motor-cycle without a helmet may account to breach a statutory duty. However, such a breach in isolation, does not suffice to contributory negligence. For contributory negligence to be attributed, it must be proven that the omission to wear a helmet either proximately caused accident or significantly aggravated to injuries sustained by the victim. A direct casual link must be established either between the breach and the occurrence of accident or between the breach and the accident of the harm suffered by the victim.

11. A perusal of the record further reveals that the Ld. Tribunal has expressly held that the accident occurred in densely populated area of the town, arising from the rash and negligent driving of respondent No1 (Jagtar Singh). However, Ld. Tribunal has erroneously imputed contributory negligence to the deceased (Het Ram) on the ground that he allegedly failed to maintain control over his scooter. These findings of the Ld. Tribunal entirely unfounded and untainable in law. There exist no evidence on the record to substantiate any claim of negligence or lack of control on the part of the deceased-Het Ram.

12. The Ld. Tribunal's findings in this regard is speculative at best and is neither supported by the pleadings nor corroborated by any evidence. A perusal of the record further shows that no evidence has been adduced to establish that Het Ram-deceased in any way, contributed to the occurrence of the accident. Consequently, the imputation of contributory negligence is unsustainable in law and is thereby liable to be set aside.

13. Further Hon'ble the Supreme Court in ***Mohammed Siddique and another Vs. National Insurance Company Ltd. and others, 2020(3) SCC 57*** held in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence.

14. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 23.05.2006 passed by Ld. Tribunal, Fatehabad stands vitiated by a complete absence of application of judicial mind.

15. With respect to determination of compensation, the record contains evidence of deceased earning, his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

16. A perusal of the award further shows that the Ld. Tribunal has rightly assessed the income of the deceased as Rs.4333/- p.m. Further, the Ld. Tribunal has rightly applied the multiplier of 11 as per settled law. A perusal of the award further shows that no amount was granted for future prospects and loss of estate. Moroever, the amount awarded for loss of consortium and funeral expenses is also on lower side. Therefore, it requires indulgence of this Court.

**SETTLED LAW ON COMPENSATION**

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 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.*

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 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."*

19. 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**

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 Ld. Tribunal's finding regarding the contributory negligence is set aside. The award dated 23.05.2006 is modified accordingly. The appellants-claimants are held entitled to the compensation as per the calculations made here-under:-

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Monthly Income | Rs.4333/- |
| 2 | Future prospects @ 10 % | Rs.433/- (10% of 4333/-) |
| 3 | Deduction towards personal expenditure 1/3 | Rs.1588/- ( 1/3rd of 4766) |
| 4 | Total Income | Rs.3177/- |
| 5 | Multiplier | 11 |
| 6 | Annual Dependency | Rs.4,19,3640/-<br>( 3177 x 11 x 12) |
| 7 | Loss of Estate | Rs.18,000/- |
| 8 | Funeral Expenses | Rs.18,000/- |
| 9 | Loss of Consortium<br>Parental : Rs. 48,000/- x 2<br>Spousal : Rs. 48,000/- x 1<br>Filial : Rs. 48,000/- x | Rs.1,44,000/- |
| | **Total Compensation** | **Rs.5,99,364/-** |
| | **Amount Awarded by the Tribunal** | **Rs.2,21,500/-** |
| | **Enhanced amount** | **Rs.3,77,864/-** |

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 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.

22. The respondents No.2 is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the accounts of the claimants/appellants as per the ratio settled in the award dated 23.05.2006. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

23. Before parting with the judgment, this Court extends its appreciation to Mr.Suvir Dewan, Advocate, for his able assistance to the Court in the present matter. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

24. Disposed of accordingly.

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

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

**October 16, 2024**
sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes /No