



FAO-4410-2006 (O&M)

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

FAO-4410-2006 (O&M)

Date of Decision: November 08, 2024

Murti Devi and others

.....Appellants

Vs.

Ram Karan and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sunil Kumar Pandey, Advocate for
Ms. Savita Chahar, Advocate,
for the appellants.

Mr. Simranpreet Singh, Advocate, and
Mr. Sandeep K. Yadav, Advocate,
for respondent No.1.

Mr. Ayuwan Singh, AAG, Haryana,
for respondents No.2 and 3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 04.02.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') for enhancement of compensation, granted to the claimants/appellants.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on the fateful day, Ravinder (since deceased) was driving a scooter bearing registration No.HR-12C-5090 on the left side of the road. In the meantime, a bus bearing registration No.HR-69-0477, being driven by respondent No. 1, was also coming from the opposite side i.e. from

Sonepat to Rohtak in a rash and negligent manner and when it reached about two

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kilometers ahead of village Bohar, at about 08:30 P.M., it struck the scooter of the deceased-Ravinder, as a result of which, he fell down on the road and sustained grievous injuries. Respondent No.1 (driver) did not stop the bus despite repeated asking of the passengers of the said bus. The whole incident was witnessed by one Naresh Kumar, who was one of the passengers in the said bus. In the morning, when said Naresh Kumar contacted the police, he came to know that the police had already gone to the place of occurrence. He met the police at Sheela by-pass and recorded his statement. Due to the said accident, Ravinder succumbed to the injuries. In this regard, F.I.R under Sections 279 and 304-A of IPC was registered against respondent No.1 at Police Station Sadar, District Rohtak.

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

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

- 1) Whether the accident took place due to rash and negligent driving of Bus bearing registration No.HR-69-0477 by respondent No.1 resulting into death of Ravinder as alleged by claimants? OPP.
- 2) If issue No.1 is proved, whether claimants are entitled for any compensation. If so to what amount and from whom? OPP.
- 3) Whether the petition is vague and indefinite? OPR.
- 4) Whether the petitions are not filed in accordance with provisions of law? OPR.4
- 5) Whether respondent No.01 was not having a valid driving licence and the bus in question was being driven in violation of terms and conditions of the insurance policy at the time of accident? OPR-4.
- 6) Relief.

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5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.5,53,000/- alongwith interest @ 9% per annum. Hence, the claimants/appellants filed the present appeal for enhancement of compensation awarded by the learned Tribunal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contends that the compensation assessed by the learned Tribunal is on the lower side, as Ravinder (since deceased) was about 34 years of age and was working as a teacher at Sarvodaya Bal Vidhyalaya, Matiala, New Delhi. He was drawing a salary of Rs.7,246/- per month, which depicted from his salary certificate Ex.P6. He further contends that the learned Tribunal has erred in not granting any compensation to appellant/claimant No.4 i.e. father of the deceased-Ravinder on the ground that he was not dependent on the deceased-Ravinder. The learned Tribunal failed to include compensation towards future prospects, loss of consortium and loss of estate in its calculation. He further contends that the amount awarded for funeral expenses is also on the 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 respondents No.2 and 3, however, vehemently argues that the award has rightly been passed by the learned Tribunal and the amount of compensation as assessed by it has rightly been granted. He prays for dismissal of the present appeal.

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



9. A perusal of the record indicates that the Tribunal has given lumpsum amount of Rs.5,53,000/- to the appellants, which is on the lower side and deserves to be enhanced. The income of the deceased was taken as Rs.7,264/- per month on the basis of the salary certificate, which is proved on record as Ex.P6. So far as the contention of the learned counsel for the appellants to the effect that respondent No.4 should have been granted compensation on account of death of his son (deceased-Ravinder) is concerned, Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Birender and others, 2020 AIR (Supreme Court) 434** has held that legal representatives of the deceased is competent to maintain the petition. The relevant extracts of the same is reproduced as under:-

“14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

“9. In terms of clause (c) of sub-section (1) of Section 166 the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 the Act.

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



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

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique* [1989 Supp (2) SCC 275] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression “legal representative”. As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai* [(1987) 3 SCC 234] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”

In paragraph 15 of the said decision, while advertng to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The



evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

In view of the above-said referred to judgment, appellant No.4 is also entitled for grant of compensation.

10. However, the amount awarded towards loss of consortium as well as funeral expenses is on the lower side. Moreover, no amount was awarded towards future prospect and loss of estate. Therefore, the award requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

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

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having 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 if 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 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.

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

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;



- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

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

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in 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.*

* * * * *

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.”

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

“21. A Constitution Bench of this Court in Pranay 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

14. 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

04.02.2006 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.7,264/-
2	Future prospects @ 40%	Rs.2,905/- (40% of 7,264)
3	Deduction towards personal expenditure 1/3rd	Rs.3,389/- {(7,264 + 2,905) X 1/3}
4	Total Income	Rs.6,780/- (10,169-3,389)
5	Multiplier	16
6	Annual Dependency	Rs.13,01,760/- (6780 X 12 X 16)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
9	Loss of Consortium Parental : Rs. 48,000/-x2 Spousal : Rs. 48,000/-x1	Rs.1,44,000/-
	Total Compensation	Rs.14,81,760/-
	Amount Awarded by the Tribunal	Rs.5,53,000/-
	Enhanced amount	Rs.9,28,760/-

15. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the 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.

16. The respondents No.2 and 3 are directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of

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two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of the claimants/appellants, in equal share. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

17. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

08.11.2024
Virrendra

Whether speaking/non-speaking : Yes
Whether reportable : Yes