**FAO No.4806 of 2006****#1#****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO No.4806 of 2006**

Manjit Kaur and Ors.

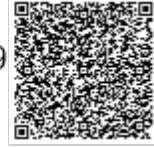
*.....Appellants**Versus*

Lakhwinder Singh and Ors

*.....Respondents****Date of Decision: 22.05.2024*****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present: Mr. Kamaldip S Sidhu, Advocate with
Ms. Kirandeep Kaur, Advocate for the appellant.Mr. Gopal Mittal, Advocate for the respondent-Insurance
Company.**SUDEEPTI SHARMA, J**

1. Challenge in instant appeal has been directed against award dated 12.08.2006 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short “the Tribunal”) whereby claim petition filed by the appellants-claimants who are widow, minor son, minor daughter and mother of deceased Ranjit Singh respectively has been dismissed.

2. The facts in brief as emerged from the claim petition are that on 30.07.2003, Ranjit Singh (since deceased), his wife Manjit Kaur(appellant) and son Harshpreet Singh had gone to Village Chhat to get medicine on Scooter No. PB-11-B-8255. Scooter was being driven by Ranjit Singh. When they reached near Banur Barrier, Dalbir Singh brother of Manjit Kaur met them on the way. Dalbir Singh, who was travelling on his separate scooter, started following the scooter driven by Ranjit Singh. At about 12-15 PM, they turned towards Village Chhat from bus stand Chhat. In the meantime, a Scorpio bearing registration No.PB-07-6849 driven by respondent No.1 in a rash and negligent manner came from Patiala side and struck against the scooter driven by Ranjit Singh, as a result of which Ranjit



Singh and Manjit Kaur (appellant) suffered multiple injuries. They were removed to PGI, Chandigarh. Ranjit Singh succumbed to his injuries on 31.07.2003 whereas appellant No.1-Manjit Kaur was given treatment in PGI Chandigarh. Accident had taken place due to rash and negligent driving of respondent No.1. Claimants had suffered a great loss due to the injuries suffered by her as well as her deceased husband.

3. Upon notice, respondent Nos.1 & 2 filed written statement denying the averments made in the claim petition.

4. Respondent No.3 in its written statement took up preliminary objections that the driver of the Scorpio was not holding a valid driving licence at the time of the accident and the claim petition was bad for non-joinder of necessary parties. On merits, the contentions raised in the claim petition were denied. It was averred that three persons were travelling on the Scooter.

5. Replication was filed by the claimant-appellant wherein averments made in the written statement were denied. On the pleadings of parties, following issues were framed:

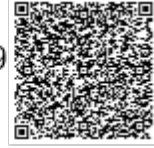
“1. Whether Manjit Kaur received injuries in an accident which had taken place on 30.07.2003 at about 12-15 pm in the revenue limits of Village Chhat due to rash and negligent driving of respondent No.1- Lakhwinder Singh while driving Scorpio Turbo No.PB-07-6849?OPA

2. Whether respondent No.1 was not holding a valid driving licence at the time of the accident, if so its effect?OPR

3. Whether claimant is entitled to receive compensation, if so to what extent and from whom?OPP

4. Relief.”

6. In order to prove their case, claimants examined PW-1 Dalbir

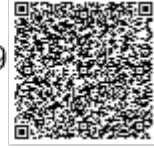


Singh, PW3-Harish Kumar besides appellant No.1-Manjit Kaur, who herself appeared in the witness box as PW2 and tendered in evidence copy of FIR as Ex.P2, copy of Post Mortem Report, copy of MLR as Ex.P5, copy of death Certificate, copy of RC as Ex.P6, copy of DL as Ex.P7, copies of FDRs as Ex.P8 to Ex.10, copy of bank pass book as Ex.P11 and Ex.P12, copies of Jamabandis as Ex.P13 to Ex.P15 and copy of RC as Ex.P16.

7. On the other hand, respondents tendered in evidence copy of Insurance Policy Ex.R2, copy of driving licence Ex.R2 and cover note as Ex.R3.

8. Having heard learned counsel for the parties and based on the material evidence as also documentary evidence brought on record, learned Tribunal dismissed the claim petition, hence the present appeal.

9. Learned counsel for the appellant submits that the claim petition of the appellants was dismissed only on the ground that the deceased Ranjit Singh-husband of appellant No.1-Manjit Kaur suddenly turned his Scooter towards his right side without giving any signal in violation of the traffic rules, because of which accident took place. He further contends that the learned Tribunal while dismissing the claim petition has not taken into consideration the contents of the FIR (Ex.P.1) wherein it has been specifically mentioned by claimant-appellant No.1 that the Scooter was stopped by the deceased husband, thus it cannot be stated that the deceased took turn without seeing the road. It is contended that the learned Tribunal did not appreciate the statements of PW1-Dalbir Singh, brother of the appellant No.1-Manjit Kaur and PW2-Manjit Kaur-appellant No.1 (injured) and rejected the claim on the ground that no evidence was brought on record to prove the negligence on the part of the driver of the offending vehicle whereas the claim of the appellants was never denied either by way of oral



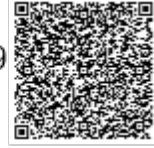
or documentary evidence adduced by the respondents. As per post-mortem report, the accident was the cause of death and the FIR was registered against respondent No.1 i.e driver of the offending vehicle. The offending vehicle was identified and no evidence either in rebuttal or defence was ever led in this regard.

10. Per contra, learned counsel representing the respondent-Insurance Company submits that the husband of the appellant had not followed the traffic rules as prescribed under Section 121 of the Motor Vehicles Act, 1988 (for short “the Act”) since no signal was given by him while turning the Scooter towards right side. He further contends that provisions of Section 128 of the Act provides that no driver of two wheeler shall carry more than one person in addition to himself whereas in the present case, the husband of appellant No.1, appellant No.1 and the minor son were there on the Scooter, therefore, they had violated the provisions of the Act. He has referred to cross examination of PW1-Dalbir Singh/brother-in-law of Ranjit Singh (deceased husband of the claimant-appellant No.1) wherein he deposed that his brother-in-law was to take turn towards right hand side in order to go to his village and that he had not yet taken the turn. Turn was near the place of accident and the car had struck against the right side of the Scooter, therefore, total negligence was on the part of the deceased husband of the claimant-appellant No.1.

11. I have heard learned counsel for the parties and perused the record with their able assistance.

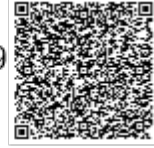
12. A perusal of the award shows that as per the FIR, the Tribunal has ignored the FIR which was lodged by appellant No.1-Manjit Kaur, who was the only eye witness being the pillion rider and suffered injuries as well.

13. In his deposition, Dalbir Singh-PW1 stated that on 30-07-2003



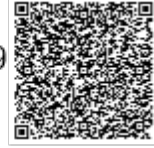
at about 12.15 P.M, he was following the Scooter Bajaj Chetak driven by Ranjit Singh (since deceased) and Manjit Kaur alongwith his son Harshpreet Singh in her lap was sitting as Pillion Rider of the Scooter of Ranjit Singh. When they turned towards village Chhat from Bus Stand Chhat, then a Scorpio Turbo No.PB-07L/6849 driven by Lakhwinder Singh-respondent no.1 at a very high speed in a rash and negligent manner without observing Traffic Rules and in a Zig Zag Manner came from Patiala side and struck against the Scooter of Ranjit Singh and with the impact of accident, Ranjit Singh (since deceased) suffered multiple injuries on his head and other parts of the body. Ranjit Singh and Manjit Kaur were admitted in P.G.I. Chandigarh, where Ranjit Singh died on 31-07-2003 due to the injuries received by him in aforesaid accident caused by respondent no.1 while driving the aforesaid vehicle Scorpio in a rash and negligent manner and at a very high speed without observing Traffic Rules. In his cross examination, he deposed that his brother-in-law was to take turn towards right hand side in order to go to his village and he had not yet taken the turn. He further deposed that the turn was near the place of accident at a distance of 20-25 yards and front portion of the car struck against the Scooter of his brother-in-law. Car struck against the right hand side of the Scooter. He stated that the road was wide enough from where three truck could pass simultaneously. He further deposed that there was no vehicle on the road at the time of accident and the FIR was lodged immediately after the accident.

14. Ex.PW2/A is statement made by CW2-Manjit Kaur (appellant No.1), who stated that on 30-07-2003, she alongwith her husband Ranjit Singh and her son had gone to village Chhat to get medicine for her son Harshpreet Singh on a Bajaj Chetak Scooter bearing No.PB-11-8255 driven by her husband Ranjit Singh and she was the pillion rider. She further stated



that when they reached near village Banar Barrier, Dalbir Singh s/o Jit Singh who is her brother met them on the way. He was on his own Scooter and he started following them. When at about 12.15 PM, they turned towards village Chhat from Bus Stand Chhatt, then a Scorpio Turbo bearing No.PB-07L-6849 being driven by Lakhwinder Singh-respondent no.1 at a very high speed and in a rash and negligent manner without observing Traffic rules and in a very Zig Zag manner came from Patiala side and struck against the Scooter and caused the accident, as a result of accident her husband Ranjit Singh received multiple injuries on his head and other parts of the body and she also received multiple injuries on her head and other parts of the body and then they were admitted to P.G.I. Chandigarh where Ranjit Singh had died on 31-07-2003 due to the injuries sustained by him in the aforesaid accident. In her cross examination, there are no discrepancies and contradictions. She stated that the village road was wide enough where three truck could pass at one time. When they were to take turn towards their village, front portion of the Scorpio struck against the Scooter.

15. A perusal of the medico-legal report of Manjit Kaur shows that multiple injuries were suffered by her. One of the injuries shows that there was fracture of bone also. It is apparent from a bare reading of statements of PW1 and PW2 that the deceased Ranjit Singh was about to take turn towards right side and the car hit from the right side of the Scooter, which proves the negligence on the part of the driver of the Scorpio. So far as the contention of learned counsel for the respondent regarding violation of the traffic rules is concerned, this Court rejects the same since a perusal of the evidence clearly shows that the Scooter was not being driven at a very high speed and it was about to turn right. Therefore, the rejection of the claim of the appellants on the ground of not obeying the traffic rules is not justified. The



other contention of learned counsel for the respondent that as per Section 128 of the Act, the driver of two wheeler cannot carry more than one person in addition to himself is not acceptable as it is evident from the record that the third person, at the time of accident, was a minor son of two years old. That apart, the driver of the offending vehicle never appeared in the witness box in order to prove his innocence, therefore the factum of accident and rash and negligent driving on the part of the driver stands proved. Further more, the claim of the appellants, which is supported by evidence, goes unrebutted.

16. Furthermore, from the statement of PW1-Dalbir Singh and PW2-Manjit Kaur, it is clear and evident that the road was wide enough from where three trucks could pass simultaneously. It has further come on record that the Scorpio Turbo was being driven by Lakhwinder Singh-respondent No.1 at a very high speed in rash and negligent manner.

17. In view of the above, present appeal is allowed and the award dated 12.08.2006 passed by the Tribunal is set aside.

18. 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,



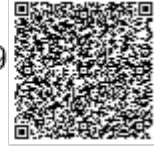
and one-fifth (1/5th) where the number of dependent family members exceeds six.

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. c 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 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.”

19. 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;

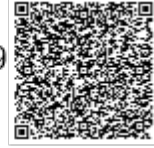
(C) Age of deceased on basis for applying multiplier;

(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*² 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.

** * * * **

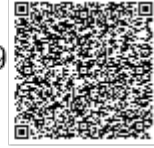
59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. 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.”

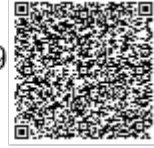
20. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as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

21. This matter pertains to the year 2006 and it falls in the category of burnt cases. Since issue No.1 was decided against the appellants, therefore issue No.3 was not decided. Though in the evidence, income of the deceased is referred to but there is no rebuttal or cross examination of the same. Since issue No.1 was decided against the appellants, at this stage, this Court feels it appropriate to decide the compensation in the light of afore mentioned judgments and by taking into consideration the minimum wages fixed as per the prevalent guidelines/instructions of the State Government.

22. The minimum wages of the deceased Ranjit Singh is taken to be Rs.2500/- per month.

23. In view of the law laid down by Hon’ble Supreme Court in the above referred to judgments, the appellants-claimants are held entitled to compensation as per the calculations made hereunder:

Sr.	Heads	Compensation Awarded
1	Monthly Income	Rs.2500/-
2	Future Prospects @ 40 %	Rs.1000/- (40% of 2500)
3	Deduction towards personal expenditure	Rs.875/- (1/4th of Rs.2500+1000)
4	Total Income	Rs.2625/- (Rs.3500-Rs.875)
5	Multiplier	17
6	Annual Dependency	Rs.5,35,500- (Rs.2625x12x17)
7	Loss of Estate	Rs.18000/-
8	Funeral expenses	Rs.18,000/-
	Loss of Consortium	Rs.1,92,000
	Parental: (Rs.48000/- x 2)	
	Spousal: (Rs.48,000/-)	
	Filial (Mother) (Rs.48,000)	
	Total Compensation	Rs.7,63,500/- (5,35,500+18,000+18,000+ 1,92,000)

23. 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.

24. The Insurance Company-respondent No.3 is directed to deposit the awarded amount along with interest @ 9% per annum with the Tribunal within a period of three months from today. The compensation amount shall be disbursed by the Tribunal to the claimants-appellants in equal shares



FAO No.4806 of 2006

#14#

in their respective accounts. Appellant-claimants are directed to furnish their complete bank account details to the Tribunal.

25. All the pending misc application(s), if any, shall stand disposed of.

May 22, 2024
manoj

(Sudeepti Sharma)
Judge

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

FAO No.4806 of 2006

#15#

2024:PHHC:073069

