

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

220

FAO-5354-2006 (O&M)

Date of Decision: November 29, 2024

Smt. Ramesh and others

.....Appellant(s)

Vs.

Shanker and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Shashikant Gupta, Advocate
for the appellants.

Mr. Ajay Gupta, Advocate
for respondent No.1

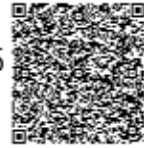
Mr. Nitin Gupta, Advocate
for respondent No.3-Insurance Co.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 29.08.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased-Rajender Singh, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 25-01-2005 Rajender Singh (since deceased) was going to Narnaul on his Motorcycle bearing registration No. MH-31-BK-7398 in connection with purchase of a buffalo and on his return when he reached near Bus stop of



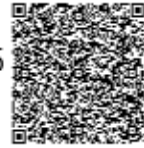
village Gulawla, in the meanwhile, a Truck bearing registration No. HR-12-GA-0746 being driven by respondent No.1 rashly and negligently at a very high speed in a zig-zag manner coming from the front side hit the motor cycle of Rajender Singh. On account of which, Rajender Singh fell down and received multiple injuries. The truck driver fled away from the spot. The accident was witnessed by Tara Chand and Gajender residents of village Daroli Ahir. It is pleaded that the accident was caused due to rash and negligent driving of Truck No. HR-12GA- 0746 by its driver (respondent no. 1).

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 motor vehicle accident that took place on 25-1-2005 is an outcome of rash and negligent driving of truck No.HR-12-GA-0746 by respondent no.1 Shankar? OPP.*
2. *Whether the petitioners are entitled to compensation for the death of Rajender Singh in the aforesaid accident, if so, in what amount? OPP.*
3. *Whether respondent No.3 is entitled to repudiate the contract of insurance on the grounds alleged ? OPR3*
4. *Relief.*

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

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

6. Learned counsel for the appellants contend that the claim petition was dismissed without appreciation of evidence on record, only on the ground that the appellant failed to establish that death of Rajender Singh was caused by negligent driving of driver of truck No.HR-12GA-0726. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants as per settled law.

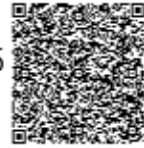
7. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that the claim petition has rightly been dismissed. Therefore, he prays for dismissal of the appeal.

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

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

“8. The first version of the accident is found in FIR (Ex.P2) which was recorded on 25-5-2005 at 9.30 a.m. The informant is one Balwant Singh who was driving the motorcycle (Hero Honda Splendour Plus) No. MH-31BK-7398 and was hit by some vehicle. Number plate No. HR-12GA-0268 was lying at the spot. Rajender Singh had succumbed to the injuries sustained in the accident.

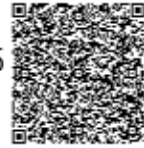
The informant has not been examined by the claimant; instead Tara Chand and Raj Pal have been examined as part of the oculatory account. Raj Pal (PW4) and Tara Chand (PW5) have not been able to convince their presence. Raj Pal (PW4) was subjected to pointed cross-examination. His version is not convincing. He had not taken the Injured to the hospital or to any other private doctor. He had also left the injured at the spot despite the fact that he was a co-villager. He has mentioned that he was not present at the spot but had given the registration number of the truck and the name of the driver to the police.



9. *Deposition of Tara Chand (PW5) is on no better footings. Despite the fact that deceased was his nephew in relationship, he had neither supported him by getting him medical aid nor had gone to the police station for lodging the FIR. He had also not taken Rajender Singh to any hospital or to any doctor. He had not given any chase to the alleged offending driver. Thus deposition of Tara Chand (PW5) is highly inconvincing. Had Raj Pal and Tara Chand been present at the spot, both of them could not have left the injured at the spot.*

10. *Deposition of Dr. Karan Singh (PW1) reveals that dead body was identified by Rajesh and Kuldeep. Had Raj Pal and Tara Chand been there, they were to be with the victim but it is not the case. Thus death of Rajender Singh vide PMR is true but it has not been established.*

From the totality of facts and circumstances, it is clear that Truck No. HR-12GA-0726 was involved which had been introduced merely to get compensation. Statements of Raj Pal and Tara Chand PWs reveal that they are introduced witnesses. Their cross-examination reveals that hollow standing as witnesses. Merely because the number plate No. HR-12GA-0268 was found at the place of accident, is no ground to raise presumption. The Investigating Officer HC Om Parkash (PW2) had taken the truck in possession on 28-1-2005. When cross-examination became grilling on him, he admitted that no eye-witness at the spot had given registration number of the offending vehicle as also the name of the driver. The accident is of 25-1-2005 when the spot was visited by the Investigating Officer neither Raj Pal (PW4) nor Tara Chand (PW5) had met him. It was only on 27-1-2005 that he had met the Investigating Officer and his statement was recorded. His supplementary statement was recorded on 28-1-2005. Thus the vehicle is introduced one at the instance of the Investigating Officer. The claimants have badly failed to establish that death of Rajender Singh was caused by negligent driving of truck No. HR-12GA-0726. Thus this issue is answered against the petitioner.”

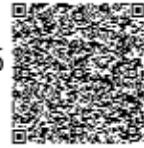


10. A perusal of the above shows that Ld. Tribunal has totally ignored the factum of accident and FIR (Ex.P-2) which was recorded. Further Dr. Karan Singh was examined as PW-1 who proved the postmortem report Ex.P-1 wherein the cause of death was mentioned as due to head injury caused by vehicular accident which was ante mortem in nature and sufficient to cause death in ordinary course of life. After postmortem body was handed over to the police.

11. HC Om Parkash was examined as PW-2. He brought the original FIR register pertaining to the FIR No.28 dated 25.01.2005 under Sections 279/304 IPC. He proved the correctness of the FIR.

12. Raj Pal was examined as PW-4 and Tara Chand was examined as PW-5, both were eye-witnesses who by their statements proved the factum of accident. The informant in the FIR was Balwant Singh.

13. Ld. Tribunal while dismissing the claim petition has totally ignored the fact that number plate No. HR-12GA-0268 was found at the place of accident. The Investigating Officer HC Om Parkash who was examined as PW-2 had taken the truck in possession on 28.01.2005 further proves the factum of accident and the involvement of the truck in the accident. His statement while deposing as PW-2 proves the factum of accident as he categorically stated that during investigation of the case, he took into possession the Truck No.HR-12GA-0268 whose number plate was found at the spot of accident. He further stated that truck was taken into possession on 28.01.2005 from the area near Tula Ram Chowk Mohindergarh. He proved the statement of Raj Pal and Tara Chand (PW-4 and PW-5 respectively). He further stated that truck was mechanically examined on 29.01.2005 and according to



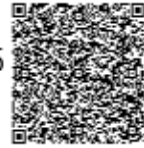
the mechanic report, the rear side number plate of the truck was found to be broken. The motorcycle No.MH-31BK-7398 was also mechanically examined on 29.01.2005.

14. The finding of the Learned Tribunal that the testimonies of Raj Pal (PW-4) and Tara Chand (PW-5) are not convincing is not acceptable to this Court. The Tribunal's reasoning, which questions why Raj Pal, as an alleged eyewitness, did not take the injured to the hospital or consult a private doctor, overlooks critical facts on record. The statement of PW-4, Raj Pal, clearly explains that he and Tara Chand (PW-5) followed the truck involved in the accident, but their motorcycle suffered a puncture, causing a delay in their return to the scene. Upon their return, they were informed that the police had already taken the injured. This sequence of events adequately justifies the delay and does not cast doubt on Raj Pal's (PW-4) credibility as a witness. Therefore, the Tribunal's finding on this issue is unsupported by the evidence and fails to account for the reasonable explanation provided by Raj Pal (PW-4). This Court, thus, rejects the conclusion as unsustainable in law.

15. In view of the above, the reasoning given by Ld. Tribunal while dismissing the claim petition is not acceptable to this Court as the evidence on record proves the factum of accident and involvement of the truck No.HR-12GA-0268.

16. On the touchstone of hearinabove discussed findings, the award dated 29.08.2006 passed by Ld. Tribunal, Narnaul stands vitiated by a complete absence of application of judicial mind.

17. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and his age etc.



Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on the record.

18. A perusal of the award shows that the deceased was stated to be doing business of buying and selling of buffaloes and his income was asserted as Rs.8000/- per month. However, no documentary evidence regarding his income was placed before the Tribunal, therefore, under the prevailing facts of the present case, his income is to be assessed as Rs. 3000/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Haryana. Further, a perusal of the award shows that the deceased was aged about 34 years of age at the time of the accident. Therefore, a multiplier of 16 is to be applied in the instant case according to the settled law. Therefore, the appellants-claimants are held entitled to the grant of compensation as per settled law.

SETTLED LAW ON COMPENSATION

19. 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



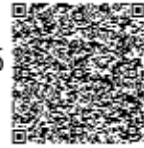
(1/5th) where the number of dependent family members exceeds six.

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 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.

20. 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*

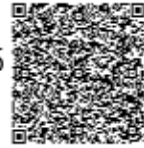


index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be 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.

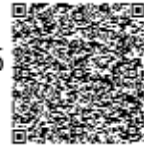
59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

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.”

21. 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.

RELIEF

22. 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 29.08.2006 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3000/-
2	Future Prospects @ 40%	Rs.1200/-(40% of 3000)
2	Deduction towards personal expenditure 1/4th	Rs.1050 (¼ of 4200)
3.	Total Income	Rs.3150/-
4	Multiplier	16
5	Annual Dependency	Rs.6,04,800/-(3150X16X12)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- X 2	Rs.1,92,000/-



	Spousal : Rs. 48,000/- X 1 Filial : Rs. 48,000/- X 1	
	Total Compensation	Rs.8,32,800/-

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 Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.
24. The Insurance Company is directed to deposit the awarded amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.
25. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Nitin Gupta, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.
26. Disposed off accordingly.
27. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 29, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes