



FAO-561-2006 (O&M)

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

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Date of Decision: November 19, 2024

Varsha Rani and others

.....Appellant(s)

Vs.

Rishi Pal and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ishant Khangwal, Advocate and
Mr. D.K. Dogra, Advocate for the appellants.

Mr. Ayush Arora, Advocate and
Mr. Rahul Vats, Advocate for respondent No.2

Mr. Ram Avtar, Advocate for respondent No.5

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 15.09.2005 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, Panipat (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased-Ashok Kumar, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 20.10.2002 at about 10.30 P.M. Bharat Bhushan alias Monu and Ashok Kumar alias Monu were going from Samalkah to Panipat on Rajdoot Motor Cycle No.HR-05-D-4519 driven by Ashok Kumar alias Monu. At about 11.00 p.m. when they reached near Giani Dhaba, village Sewah, a Maruti Car bearing

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registration No. CH-01-J-9844 driven by the respondent No. 1 rashly and negligently came from Samalkha (back) side and hit the motor-cycle. Due to this, Bharat Bhushan alias Monu and Ashok Kumar alias Monu fell down along with motor-cycle and suffered injuries. Ashok Kumar alias Monu died on the spot. FIR No. 424 dated 21.10.2002 under Sections 279/304-A of the Indian Penal Code, 1860 was registered against respondent No. 1 at Police Station, Chandni Bagh, Panipat.

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 took place due to rash and negligent driving of Car No. CH-01-J-9844 by respondent No. 1 as alleged? OPP.*
- 2. Whether the petitioners are entitled to compensation, if so, how much and from whom? OPP.*
- 3. Whether respondent No. 1 was not holding any valid and effective driving licence at the time of accident, if so, its effect ? OPR.*
- 4. Whether the respondents No. 1 to 4 violated the terms and conditions of Insurance policy as alleged? OPR.*
- 5. 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.



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SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellants contends that the claim petition was dismissed only on the ground that the claimant has not produced any oral or documentary evidence to prove the factum of accident. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants as per settled law.

i). He further submitted that during the pendency of the appeal, appellant/claimant No.3-Paras Kumar has expired and CM No.14428-CII-2023 has been filed for deletion of the name of the said appellant/claimant No.3. He further prays that if compensation is awarded, the same would be disbursed between appellants/claimants No.1 and 2 only.

7. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that claim petition has rightly been dismissed. He further contends that FIR was registered against the unknown vehicle and this is the planted case against respondent No.1. 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:-

“11. The Ld. Counsel for the claimants has argued that the claimants have examined Ravinder as PW1 and Bharat Bhushan injured/eye witness as PW4 who have deposed that the accident took place due to rash and negligent driving of the Maruti Car by the respondent No. 1. Veracity of their testimony could not be shattered by their cross examination. Their testimony is also supported by testimony of PW2 Daya Nand, Additional Ahlmad who has proved copies of challan, site plan and charge sheet Ex.

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PW2/A to Ex. PW2/C which show that the respondent No. 1 is being prosecuted for commission of offences punishable under sections 279 and 304-A of the Indian Penal Code, 1860. In their written statement, the defendants No. 1, 3 and 4 have admitted the accident by pleading that the accident took place due to the sole negligence of the respondent No. 1. FIR was lodged against unknown vehicle/driver. It was the duty of the Investigating officer to search out the offending vehicle and the driver thereof. The Investigating officer searched out the offending vehicle and the driver. The claimants have filed the claim petition according to the investigation of the Investigating officer. The respondent No. 5 has failed; to prove false implication of the driver and owner of the offending car. It was not necessary to mention name of the eye witness in FIR. On knowledge, the investigating officer challaned the driver and the vehicle. The owner and the driver of the offending vehicle did not file any complaint regarding their false implication to the higher police officers or any other agency. The respondent No. 5 cannot escape its liability by simply saying that the driver and the owner have been falsely implicated. Complaint made by the respondent No. 5 to S.P. Panipat was of no value. The claimants belong to Samalkha. The respondent No. 1 belongs to Panpat and the respondent No. 2 belongs to Chandigarh and there is no question of collusion between them and with the police: The claimants have proved their claim as to causing of the accident by the respondent No. 1 due to rash and negligent driving of the car by the respondent No. 1.

12. The Ld. Counsel for the respondents No. 1, 3 and 4 has argued that the accident took place due to sole negligence of the deceased while the Ld. Counsel for the respondent No.2 has argued that the Maruti Car was not the offending vehicle.

13. On the other hand, the Ld. Counsel for the respondent No. 5 has argued that the present claim petition has been filed on the basis of FIR No. 424 dated 21.10.2002 under sections 279/304-A of the Indian Penal Code, 1860, Police Station Chandni Bagh,

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Panipat. Bharat Bhushan the pillion rider of the Motor Cycle had lodged FIR against unknown vehicle/unknown driver. After a gap of three months, the criminal investigating officer of the criminal case recorded the statement of Ravinder Kumar and involved Car No. CH01J-9844 and the respondent No. 1 and submitted the challan. The respondents No. 1, 3 and 4 admitted the accident in their written statement. The respondent No. 2 pleaded having sold the vehicle. The respondent No. 5 made written representation Superintendent of to the Police, Panipat for reinvestigatin of the case. The S.P. Panipat did not call any official of the respondent No. 5 and the police officials did not investigate the case. Name of eye witness Ravinder who also belongs to Sewah was not mentioned in the FIR. Ravinder did not come forward to make his statement to the police on 21.10.2002. Ravinder never tried to shift the injured persons in the Hospital. The presence of Ravinder at the spot is clearly doubtful. The statement made after three months is not of much evidentiary value. Ravinder and Bharat Bhushan have still not given any evidence in criminal case. The claimants have falsely involved the vehicle and the driver in collusion with the respondents No. 1 to 4 and the police in order to get compensation from the respondent No. 5. In support of his arguments, the Ld. Counsel for the respondent No. 5 has placed reliance on the observations in Smt. Chand Kaur and others Vs. Mohinder Singh and others 2001 (1) Criminal Court Judgments 648 (Pb. & Hr. H.C.), Madya Pradesh State Road Trans. Corpn. Vs. Vaijanti and others 1995 ACJ 560 (M.P.H.C.) and Din Dayal Vs. Raj Kumar alias Raju 1998 (2). Criminal Court Judgments 159 14. To prove that the accident resulting in death of Ashok Kumar alias Monu was caused due to rash and negligent driving of Maruti Car No. CH01J-9844 by the respondent No. 1, the claimants have examined Ravinder (eye witness) as PW1, Bharat Bhushan (injured/eye witness) as PW4 and Daya Nand, Additional Ahlmad as PW3 and produced copies of challan, site plan and charge sheet Ex. PW2/A to Ex. PW2/C.

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15. In his affidavit Ex. PW1/A, PW1 Ravinder has stated that on 20.10.2002 at about 11.00 P.M., he was going to his house from his fields. When he reached near Giani Dhaba, he suddenly heard noise of some vehicles and he saw that Maruti Car No. CH01J-9844 had hit a Motor Cycle and the driver of the Car was trying to flee from the spot and after intervention by him, the driver of the Maruti car mentioned his name respondent No. 1. fled from the spot. and address as the The respondent No. 1 then The accident took place due to the rash and negligent driving of the respondent No. 1. Ashok Kumar, the driver of the Motor Cycle died on the spot and pillion rider Bharat Bhushan had got minor injuries. The Investigating officer met him on 16.1.2003 near Giani Dhaba and recorded his statement.

16. In his affidavit Ex. PW4/A, PW4 Bharat Bhushan has stated that on 20.10.2002 at about 10.30 P.M., he and Ashok Kumar proceeded from Samalkha to Panipat on Rajdoot Motor Cycle No. HR-05B/4519 driven by Ashok Kumar. about 11.00 P.M. when they reached near Giani Dhaba near Sewah, a Maruti Car driven by the respondent No. 1 rashly and negligently came from Samalkha side and hit their Motor cycle due to which they fell down and Ashok Kumar died at the spot and he (PW4 Bharat Bhushan) received minor injuries. After the accident, the respondent No.1 fled with his Maruti Car and he could not note down the number of the Maruti Car. On 16.1.2003 when he and Head Constable ..Raj Kumar: were present in investigation of the Case at Giani Dhaba in Sewah, PW1 Ravinder came there and made statement to the Investigating Officer. ON 18.1.2003 on being called by the Investigating Officer, he went to the police station and identified the respondent No. 1.

18. In his cross examination, PW1 Ravinder has admitted that he went to the spot on hearing the noise and he had not seen the collision between the vehicles at that time but he heard only noise. In view of this admission, testimony of PW1 Ravinder as, to causing of the accident by rash and negligent driving of Maruti

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Car No. CH01J-9844 by the respondent No. 1 does not warrant/deserve credence and acceptance.

19. Even otherwise in his cross examination, PW1 Ravinder has admitted that:-

(1) after the accident police reached the spot.

(ii) Statement of Bharat Bhushan was recorded in his presence.

(iii) On that day, police did not record his (PW1 Ravinder's) statement:

(iv) He did not disclose the name and address of the driver and number of vehicle to Bharat Bhushan at the spot at the time of accident;

(v) Police met him after three months from the accident when he made statement to the police.

These admissions of PW1 Ravinder prove his conduct which was not only unnatural but also warrants/justifies the inference that Ravinder was not on the spot. Reference in this regard may be made to Din Dayal Vs. Raj Kumar alias Raju (Supra). If PW1 Ravinder had stopped the offending car and the driver immediately after the accident and the driver of the offending car had disclosed his name and address to him, then PW1 Ravinder would have immediately told the name and address of the driver and the number of the car to PW4 Bharat Bhushan. In any case, PW1 Ravinder would have disclosed the same when statement (as to causing of the accident by unknown vehicle) of Bharat Bhushan was being recorded/made in his presence. PW1 Ravinder was duty bound in view of legal obligation to disclose the name and address of the driver and the number of the car to the police. Conduct of PW1 Ravinder of not informing the police or the other injured about the name and address of the driver and the number of the car for the long period of three months without any plausible explanation shatters the veracity of his testimony as to his presence on the spot, stopping of the offending vehicle by him and disclosure of his name and address by the driver to him.

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20. Moreover, it is also pertinent to observe that in his statement Ex. R1 on the basis of which FIR was registered, PW4 Bharat Bhushan had not mentioned as to PW1 Ravinder or any other eye witness being present and having witnessed the occurrence. In their affidavits. Ex. PW1/A and Ex. PW4/A, PW1 Ravinder and PW4 Bharat Bhushan have stated that when PW4 Bharat Bhushan and Investigating Officer were present investigation, PW1 Investigating Officer at Giani Dhaba Ravinder met at for the Giani Dhaba or 16.1.2003 and made statement to him but in his cross examination PW1 Ravinder has stated tha the police met him after three months; the police came to his residence at village siwal and at that time, PW4 Bharat Bhushan was also with the police. If the Investigating officer of the case and PW4 Bharat Bhushan went to the residence of PW1 Ravinder at village Siwah and PW1 Ravinder did not meet them on Giani Dhaba, then it is a mystery how the Investigating Officer of the case and PW4 Bharat Bhushan came to know that PW1 Ravinder was also present on the spot and knew the name and address of the driver and the number of the offending vehicle. Visit by the Investigating officer of the case with PW4 Bharat Bhushan to the house of PW1 Ravinder without any linking information by itself proves that PW1 Ravinder was not present on the spot and did not witness, any such occurrence as deposed to by him and PW1 Ravinder was subsequently introduced as witness in collusion with the respondents No. 1, 3 and 4 and the respondent No. 2 with the connivance of the police to get compensation from the respondent No. 5,

21. RW2 Partibha Lady Head Constable has proved making of complaint by the respondent No. 5 to S.P. Panipat for re investigation on the ground of collusion between the claimant and the respondents No. 1 to 4 and connivance by the police. No doubt in that compliant the respondent No. 5 mentioned wrong number and date of FIR as proved by entry in receipt register deposed to by RW2 Pratibha Lady Head Constable but the police made



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reports on the complaint in respect of the case pertaining to FIR number and date of which were wrongly mentioned and did not even go through the contents of the complaint of the respondent No. 5. The respondent No. 5 had done its needful and the lapse was that of the police in not reinvestigating the matter.

22. No doubt, PW2 Daya Nand Addl. Ahlmad has stated that in case State Vs. Rishi Pal, FIR NO. 424 dated 21.10.2002 under Sections 279 and 304 A of the Indian Penal Code, 1860 Police Station Chandni Bagh, Panipat, charges have been framed against the respondent No. 1 and PW2 Daya Nand Addl. Ahlmad has proved copies of challan, site plan and charge sheet Ex. PW2/A to Ex. PW2/C but prosecution of the respondent No. 1 is not sufficient to prove causing of the accident due to rash and negligent driving of Car No. CH01J-9844 by the respondent No. 1. Reliance in this regard may be placed on the observations in Ram Kara Versus zile Singh 2001(3) RCR (Civil) 583. R Daya Nand, Addl. Ahlmad has proved that Ravinder was served with summons through brother for 19.12.2003 and PW4 Bharat Bhushan was served with summons through sister but no prosecution evidence had been recorded. The fact that PW1 Ravinder and PW4 Bharat Bhushan did not appear to depose against the respondent No. 1 on the dates of hearing fixed for prosecution evidence despite legal obligation also justice inference of collusion between the claimants and the respondents No. 1 to 4.

1. 23. Even though in their written statement, the respondents No. 1, 3 and 4 admitted the accident but at the same time, the respondents No. 1, 3 and 4 pleaded sole negligence of the deceased to be the cause of the accident. It is settled law that an admission whether amounting to confession or not unless it is separable has to be taken as a whole or not at all. Reference may be made to Md. Koya Vs. Muthu Koya AIR 1979 SC 154. Therefore, the admission has to be accepted or rejected as a whole. If the two parts are held to be separable, then the claimants have not been able to

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impeach the credibility of latter part of the admission/defence of the respondents No. 1, 3 and 4. Section 58 of the Indian Evidence Act, 1872 provides that the facts admitted need not be proved but in view of plea of collusion taken by the respondent No. 5. the claimants and the respondents No. 1, 2, 3 and 4 were bound to prove the facts admitted otherwise than by admission. The respondents No. 1, 2, 3 and 4 have not produced any oral or documentary evidence to prove that:-

(1) On 20.10.2002, the respondent No. 1 was employed under the respondent No. 2 as driver;

(ii) Accident of the Motor cycle driven by the deceased took place with the Car of the respondent No. 2. The respondents No. 1, 2, 3 and 4 have not entered into the witness box which not only warrants drawing of adverse inference against the respondents No. 1, 2, 3 and 4 in view of law reiterated in Madhya Pradesh State Road Transport Corporation Vs Vaijanti and others (Supra) but also shows collusion between the claimants and the respondents No. 1 to 4.

24. In Smt. Chand Kaur and others Vs Mohinder Singh and others (Supra), where witness did not give the number of the truck and his presence was doubtful as he was not a eye witness named in FIR, it was held by Hon'ble Punjab and Haryana High Court that the Tribunal rightly ignored the same and that rash and negligent driving had not been established.

25. In these facts and circumstances of the case and in view of the above quoted judicial precedents, oral and documentary evidence produced by the claimants cannot be relied and acted upon and is liable to be discarded and the claimants must be held to have failed to prove that the accident resulting in death of Ashok Kumar alias Monu was caused due to rash and negligent driving (1) of Car No. CH01J-9844 and (11) by the respondent No. 1.”

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10. A perusal of the record shows that in the written statement respondents No.1,3 and 4 admitted the factum of accident by stating that accident took place due to sole negligence of respondent No.1.

11. Daya Nand, Additional Ahlmad who was examined as PW-2 produced copies of challan, site plan and charge sheet Ex. PW2/A to PW2/C, which proves the prosecution of respondent No.1 in commission of offence punishable under Section 279, 304-A of Indian Penal Code, 1860.

12. Ravinder eye witness was examined as PW-1 who narrated the whole incident and stated that the accident took place due to rash and negligent driving of respondent No.1.

13. Even affidavit PW4/A was filed by Bharat Bhushan, who was injured/eye witness and was examined as PW-4 who narrated the whole incident of accident. There is no discrepancy in the cross examination.

14. In view of the evidence as referred to above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellants-claimants.

15. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 15.09.2005 passed by Ld. Tribunal, Panipat stands vitiated by a complete absence of application of judicial mind.

16. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and expenses incurred for medical treatment and hospitalization. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on the record.



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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.



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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.

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;

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(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*



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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.”

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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 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.*

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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

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 award dated

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15.09.2005 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.2500/-
2	Future Prospects @ 40%	Rs.1000/-(40% of 2500)
2	Deduction towards personal expenditure 1/3rd	Rs.1167/- (1/3rd of 3500/-)
3.	Total Income	Rs.2333/-(3500-1167)
4	Multiplier	15
5	Annual Dependency	Rs.4,19,940 (2333x12x15)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- X 2 Spousal : Rs. 48,000/- X 1 Filial : Rs. 48,000/- X	Rs.1,44,000/-
	Total Compensation	Rs.5,99,940/-

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 appellant-claimant is granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

22. In view of the submission made by learned counsel for the appellants/claimants that during the pendency of the appeal, appellant/claimant No.3-Paras Kumar has expired and claimant-appellant No.1 and 2 are his legal heirs and CM No.14428-CII-2023 was filed for bringing on record his LRs.

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Since the appellant No.3 has died, and appellants No.1 and 2 are stated to be his Legal heirs, therefore CM No.14428-CII-2023 is allowed and the awarded amount of compensation be disbursed between appellant/claimant No.1 and 2 only in equal shares.

23. 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.

24. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Ram Avtar, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

25. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 19, 2024
sonia arora

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