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

1. FAO-3330-2008 (O&M)
Date of decision: 03.09.2024

Urmila Devi and others ...Appellants

Versus

Shankar Lal and others ...Respondents

2. FAO-1242-2008 (O&M)
Date of decision: 03.09.2024

New India Assurance Company Limited ...Appellant

Versus

Urmila Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjay Mittal, Advocate for the appellants
(In FAO-3330-2008)
for respondent Nos.1 to 5 (In FAO-1242-2008)

Mr. Rajneesh Malhotra, Advocate and
Ms. Manvi Verma, Advocate
for respondent No.5-New India Assurance Company Limited
(In FAO-3330-2008) and
for the appellant (In FAO-1242-2008)

Mr. Paul S. Saini, Advocate
for respondent No.5-New India Assurance Company Limited
(In FAO-3330-2008)

VIKAS BAHL, J. (ORAL)

1. The widow, four minor children, father and mother of the deceased namely Yogesh Chand, who had died in an accident which had taken place on 28.05.2005, have filed an appeal bearing No.FAO-3330-2008 for modification of the award dated 23.11.2007 and have prayed for



enhancement of the amount of compensation awarded by the Motor Accident Claims Tribunal, Narnaul (hereinafter to be referred as “the Tribunal”). FAO-1242-2008 has been filed by New India Assurance Company Limited challenging the same award dated 23.11.2007 and the said Insurance Company has prayed that the amount awarded by the Tribunal be decreased.

2. The present order would dispose of both the said appeals as the same are arising out of the same award. With the consent of learned counsel for both the parties, FAO-3330-2008 has been taken up as a lead case and the facts are being noted from the same.

3. The only dispute in the present case is to the amount of compensation to which the present appellants/claimants, who had filed MACT No.189 of 2005, are entitled to. The Tribunal had awarded an amount of Rs.6,80,760/- on account of death of Yogesh Chand along with interest at the rate of 7.5% per annum.

4. Learned counsel for the appellants has submitted that in the present case, future prospects had not been taken into consideration by the Tribunal and on the said account, 30% of the income of the deceased is required to be added. It is further submitted that the Tribunal had applied the multiplier of 10 whereas the multiplier of 15 has to be applied as the age of the deceased was 42 years on the date of death. It is also submitted that an amount of Rs.2,20,000/- (Rs.44,000/- x 5) on account of loss of consortium, an amount of Rs.16,500/- on account of loss of estate and another amount of Rs.16,500/- on account of funeral expenses, are also required to be added in view of the settled law and no amount on the said



three aspects had been given by the Tribunal. It is further highlighted that in para 20 of the award passed by the Tribunal, it had been observed by the Tribunal that gross monthly pay of the deceased was Rs.6803/- but on account of deduction of Rs.1130/-, salary had been taken as Rs.5673/- which is not in accordance with law. It is also submitted that it is a matter of settled law that gross salary is to be taken into consideration and only deduction on account of income tax can be made and since the monthly deduction of Rs.1130/- was not on account of income tax thus, the said amount could not be deducted as the deceased was earning Rs.6803/- and the entire amount of Rs.6803/- was for the benefit of the family of the deceased. It is further submitted that the enhanced amount of compensation be paid to the appellants with the interest at the rate of 9% per annum from the date of filing of the claim petition till its realisation. In support of his arguments, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme Court in cases titled as *Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another* reported as *(2009) 6 SCC 121*, *National Insurance Company Limited Vs. Pranay Sethi and others* reported as *(2017) 16 SCC 680*, and *Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others* reported as *(2018) 18 SCC 130*.

5. Learned counsel for the Insurance Company has submitted that in the present case, the Tribunal had not deducted any amount from the income of the deceased on account of personal expenses and in the present case, deduction to the extent of 1/5th is required to be made. It is further submitted that interest which is sought to be claimed at the rate of 9% per



annum is highly excessive and at best, interest at the rate of 6% per annum can be granted.

6. Learned counsel for the appellants, in rebuttal, after taking into consideration the objection raised by the learned counsel for the Insurance Company, has submitted a revised chart which is reproduced hereinbelow:-

“Urmila Devi & others Vs. Shankar Lal
No. of claimants – 7 (wife, 4 minor child, father, mother)
Deceased – Yogesh Chand (28.05.2005)
Age – 42 years (DOB-12.05.1963)

<i>Tribunal</i>	
<i>Salary P.M. Rs.5673/-</i>	<i>Rs.6803/-</i>
<i>Annually – Rs.68076/-</i>	<i>Rs.81,636/-</i>
<i>Deduction – NIL</i>	<i>1/5th (Rs.16,327/-) = Rs.65,309/-</i>
<i>Future – NIL</i>	<i>30% (Rs.19,592/-) = Rs.84,901/-</i>
<i>Multiplier – 10</i>	<i>14 (Rs.84,901/- x 14 = Rs.11,88,614/-</i>
<i>Loss of estate – NIL</i>	<i>Rs.16,500/-</i>
<i>Consortium – NIL</i>	<i>Rs.44,000/- x 5 = Rs.2,20,000/-</i>
<i>Funeral exp. - NIL</i>	<i>Rs.16,500/-</i>
<i>Rs. 6,80,760/-</i>	<i>Rs.14,41,614/-</i>
<i>Interest – 7.5%</i>	<i>Interest – 7.5%</i>

Increased compensation = Rs.14,41,614/- - Rs.6,80,760/-
Rs.7,60,854/- ”

7. This Court has heard learned counsel for the parties and has perused the paper book and has also considered the said revised chart and the same has been found to be in accordance with law.

8. Hon’ble the Supreme Court in para 42 of *Sarla Verma’s case* (Supra) had observed as under:-

“We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by



*applying Susamma Thomas, 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.”*

9. A perusal of the above would show that for the age of 42 years, multiplier of 14 is to be applied.

10. The Hon’ble Supreme Court in **Pranay Sethi’s case** (Supra), has held as under:-

“59. In view of the aforesaid analysis, we proceed to record our conclusions:-

59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

*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 paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 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.

60. The reference is answered accordingly. Matters be placed before the appropriate Bench.”

11. A perusal of the above judgment would show that it was observed by the Hon’ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in



para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which required to be enhanced at the rate of 10% in every three years.

12. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium, children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

“21. A Constitution Bench of this Court in Pranay Sethi 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, co-operation, 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 recognized 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 5. 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 (supra). 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.”

13. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

14. The revised chart submitted by learned counsel for the appellants is in accordance with law. Multiplier, in the present case which would be applicable is 14 and not 10 as awarded by the Tribunal since the age of the deceased was 42 years and an amount of Rs.2,20,000/- (Rs.44,000/- x 5) on account of loss of consortium is also required to be awarded in view of the law laid down in the abovesaid judgments. An amount of Rs.16,500/- on account of loss of estate as well as another amount of Rs.16,500/- on account of funeral expenses, are also required to be awarded to the present appellants whereas the Tribunal had not awarded any amount on the said accounts, thus, the said accounts have rightly been mentioned in the revised chart. Future prospects to the extent of 30% is also required to be taken into consideration and the said aspect has been rightly mentioned in the revised chart. The objection raised by learned counsel for the Insurance Company to the effect that the deduction is to be done for the personal expenses has also been duly taken into consideration in the revised chart. The only question thus, which survives is the salary which is to be taken into consideration for the purpose of assessing the total income of the deceased. A perusal of para 20 of the award passed by the Tribunal would show that it is not disputed that the total gross monthly pay of the deceased



was taken to be Rs.6803/- and that the entire amount of Rs.6803/- which the deceased was earning minus an amount on account of personal expenses would have been taken for the benefit of the entire family as even in case some amount on account of loan etc. was being deducted, the same would have also benefited the family and after payment of loan etc., the said amount in full would have been given to the deceased. Thus, the Tribunal had wrongly deducted an amount of Rs.1130/- from the gross salary while taking the salary to be Rs.5673/- and the total salary of Rs.6803/- is required to be taken into consideration. The said fact has also been rightly mentioned in the revised chart. With respect to the rate of interest, this Court is consistently awarding the rate of interest at the rate of 7.5% per annum, which is also reasonable in the present case.

15. Keeping in view the abovesaid facts and circumstances, both the appeals are partly allowed and the total amount of compensation awarded by the Tribunal is enhanced to Rs.14,41,614/- and thus, additional compensation of Rs.7,60,854/- would be payable to the present claimants/appellants along with the interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation in the same proportion as decided by the Tribunal within a period of six weeks from today.

16. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

03.09.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No