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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3853-2008
Date of decision: 27.11.2024

Geeta Devi and others

...Appellants

Versus

Jyoti and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vivek Khatri, Advocate for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.6-Insurance Company.

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VIKAS BAHL, J. (ORAL)

1. Widow, minor sons and mother of the deceased-Jai Parkash, who is stated to have died in an accident which took place on 16.02.2004 with the offending vehicle which was owned and driven by Ashok Chawla, predecessor-in-interest of respondent No.1 and was insured by respondent No.6-Insurance Company, have filed the present appeal. The only issue which arises in the present case is with respect to the compensation to which the claimants/appellants are entitled to, as other facts are not disputed.

2. Learned counsel for the appellants has submitted that in the present case, the Tribunal has not awarded any amount under the head of

future prospects, which as per the settled law, is required to be awarded to the extent of 40% and even on account of loss of estate and funeral expenses, the amount which is required to be awarded is Rs.16,500/- on each of the said accounts, whereas nothing has been awarded on account of loss of estate and only an amount of Rs.5000/- has been awarded on account of funeral expenses. It is submitted that on account of loss of consortium, total amount of Rs.1,76,000/- (Rs.44,000/- x 4) is required to be awarded to the claimants/present appellants which has also not been awarded. It is argued that thus, an additional amount of Rs.3,42,240/- is required to be awarded to the appellants. It is further submitted that the said amount be paid to the appellants along 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 case 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***. The chart which has been prepared by learned counsel for the appellants is reproduced hereinbelow:-

"FAO No.3853 of 2008

Nature of Case: Death Case

Appellant herein: Claimants i.e. (i) Geeta Devi widow (ii) Sagar (minor son), (iii) Akash (minor son), iv). Smt. Dharamvati (mother).

Name of deceased: Jai Parkash

Date of Accident: 16.02.2004

Age of deceased: 35 years

Findings regarding Issue No.2 (assessment of compensation) is at Page No.17 of the paper book.

Liability to Pay compensation amount is upon respondent no.1 Ashok Chawala (deceased) represented by his LRs. The Id. Tribunal fixed the liability of respondent no.1-Driver and owner on the ground that deceased Jai Parkash was pillion rider and he was gratuitous passenger on the vehicle involved in the accident. Findings are at Page No.20 Para No.17 of the paper book.

Details of relief Granted/Claimed

DETAILS	*Before the Tribunal*	*Compensation claimed as per judgments of Sarla Verma, Praney Sethi & Magma General Insurance*
Income	*Rs.2400/- P.M.*	*Rs.2400/- P.M.*
Deduction	*1/4th*	*1/4th*
Future prospectus	*Nil*	*40% as per Praney Sethi judgment* *Rs.2400+960* *Rs.3360* *After deduction 1/4th* *Rs.2520/-* *Annual Income* *2520x12=30,240/-*
Multiplier	*16*	*16* *Rs.30,240x16= Rs.4,83,840/-*
Loss of estate	*Nil*	*16,500/-*
Funeral Expenses	*Rs.5,000/-*	*16,500/-*
Loss of consortium	*Nil*	*44,000/-x4=1,76,000/-*
Total compensation	*Rs.3,50,600/-*	*Rs.6,92,840/-* *Rs.6,92,840-3,50,600* *Rs.3,42,240/-*
Interest	*7%*	*9%*

3. Learned counsel for the appellants has further submitted that legal representatives of owner and driver had filed FAO No.1593 of 2008 and in the said case, a Coordinate Bench of this Court vide order dated 30.03.2010 had set aside the award to the extent that the owner and driver were held liable to pay compensation and directed the Insurance Company to pay the compensation to the claimants. It is submitted that in view of the same, the Insurance Company be directed to pay the said additional amount of compensation.

4. On the other hand, learned counsel for respondent No.6-Insurance Company has submitted that the interest which has been sought by the appellants is highly excessive and at best, rate of interest that can be granted to the appellants on additional amount of compensation is 6% per annum.

5. This Court has heard learned counsel for the parties and has perused the paper book and has also considered the said chart and the same has been found to be in accordance with law and deserves to be upheld except as far as the rate of interest is concerned.

6. 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."

7. A perusal of the above would show that for the age of 35 years, multiplier of 16 is to be applied.

8. 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."

9. 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.

10. 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."

11. 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.

12. In the chart, it has correctly been stated that the claimants are entitled to compensation under the heads-future prospects, loss of estate and funeral expenses as well as loss of consortium to the extent as has been stated in the chart. With respect to the rate of interest, this Court has been consistently awarding the rate of interest at the rate of 7.5% per annum, which rate of interest is also reasonable in the present case.

13. It would be relevant to note that legal representatives of the deceased-Ashok Chawla who was the owner and driver of the offending vehicle, had filed FAO No.1593 of 2008 which was decided by a Coordinate Bench of this Court vide order dated 30.03.2010 and the operative part of the said order is reproduced hereinbelow:-

"FAO No. 1593 of 2008 (O&M)
Date of Decision: 30.03.2010

Smt. Jyoti and another ....Appellants
Versus
Geeta Devi and others ....Respondents

CORAM: Hon'ble Mr. Justice Rajesh Bindal

Present:- Mr. Ajay Jain, Advocate
for the appellants.
Mr. Vinod Gupta, Advocate
for Insurance Company.

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Considering the aforesaid fact and also the fair stand of counsel for the Insurance Company, the impugned award is set aside to the extent that owner and driver was held to be liable to pay compensation. It is directed that the Insurance

Company shall be liable to pay compensation to the claimants. The appeal is disposed of accordingly."

14. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 14.02.2008 is modified and respondent No.6-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.3,42,240/- to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation, within a period of six weeks from today.

27.11.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No