2024:PHHC:128249

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(121)

1. **FAO-4652-2008**

Reema Goel and others ...Appellants

Versus

Mahinder Pal and others ...Respondents

2. **FAO-4997-2008**

United India Insurance Co. Ltd. ...Appellant

Versus

Reema Goel and others ...Respondents

Date of decision:- 26.09.2024

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashit Malik, Advocate, Advocate,
for the appellants in FAO-4652-2008 and
for respondents No.1 to 4 in FAO-4997-2008.

Mr. V. Ramswaroop, Advocate
for the appellant in FAO-4997-2008 and
for respondent No.3 in FAO-4652-2008.

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VIKAS BAHL, J. (ORAL)

1. Present order will dispose of two appeals. One being FAO-

4652-2008, which has been filed by the widow, two minor children and mother of the deceased-Rajesh Goel, who admittedly died in a vehicular accident on 09.05.2006 and offending vehicle was being driven by respondent No.1-Mahinder Pal and was owned by respondent No.2 and was insured by respondent No.3. In the said appeal, a prayer has been made for enhancement of the compensation. Another appeal i.e. FAO-4997-2008 has been filed by the Insurance Company laying challenge to the award dated 28.08.2008 with a prayer for reduction of the amount awarded to the claimants.

2. It has been agreed between the parties that the only dispute in the present case is with respect to the compensation and all the other aspects, with respect to negligence and the fact that respondent No.1 was driving the offending vehicle and respondent No.2 was the owner of the offending vehicle and also the fact that respondent No.3 was the insurer of the vehicle in question, have not been disputed.

3. Learned counsel for the appellants/claimants in FAO-4652-2008 has submitted that the Motor Accident Claims Tribunal has not taken into consideration the future prospects of the deceased and on the said account, 40% of the income is required to be added. It is further submitted that no amount has been paid on account of loss of consortium and an amount of Rs.48,000/- is required to be added on the said aspect. Furthermore, no amount has been paid on accounts of loss of filial and parental consortium, as well as for last rites and loss of estate, thus, amounts of Rs.1,44,000/-, Rs.18,000/- and Rs.18,000/-, respectively are required to be added on the said aspects. It is submitted that the dependency which has

been taken in the present case by the Tribunal is 2/3rd and the same should be 3/4th. In support of his arguments, learned counsel for the appellants/claimants 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***. It is submitted that the additional amount be released to the present appellants/claimants by awarding interest @ 9% per annum. On behalf of the appellants, a chart has been submitted, the relevant portion of which has been reproduced herein below: -

"Death Case

Date of Accident	**09.05.2006**	
Name of deceased	Rajesh Goyal	
Age	37 years	
Vocation	Running shop of Iron and Hardware Machinery parts	
Income Claimed	Rs.20,000/- per month	
Claimants No:- 04	Widow, two minor children and mother	
Heads	**Awarded**	**Claimed**
Income	Rs.1,23,045/- p.a.	Rs.1,23,045/- p.a.
Future Prospects		40%
Dependency	2/3	3/4
Multiplier Age: 37 years	15	15
Compensation	Rs.12,30,000/-	Rs.19,37,958/-
Loss of Consortium	----	Rs.48,000/-
Loss of Filial and Parental Consortium	----	Rs.1,44,000/-
Last Rites	----	Rs.18,000/-
Loss of Estate	----	Rs.18,000/-

Interest	7.5%	9%
Grand Total	Rs.12,30,000/-	Rs.21,65,958/-

4. Learned counsel for the appellant/Insurance Company in FAO-4997-2008, on the other hand, has submitted that the rate of interest which is sought to be claimed by the appellants/claimants in FAO-4652-2008 is highly excessive and at best the interest that can be awarded on the additional compensation should be 6% per annum.

5. This Court has heard learned counsel for the parties and has perused the paper books.

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 37 years, multiplier of 15 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:-*
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> *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.***
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> *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 present case, the chart submitted by the appellants/claimants is in accordance with law except on the part of the interest. In the said chart, 40% with respect to future prospects has been rightly taken into consideration and the same is in accordance with the law laid down in the above-said judgments. Even amounts of Rs.48,000/- on account of loss of consortium, Rs.1,44,000/- on account of loss of filial and parental consortium, Rs.18,000/- for the last rites and amount of Rs.18,000/- on account of loss of estate, have been rightly taken into consideration.

Dependency in the present case would also be 3/4th instead of 2/3rd as ordered by the Tribunal. Thus, on account of the same, the claimants are entitled to an additional amount of Rs.9,35,958/-. On the aspect of interest, it would be relevant to mention that this Court has repeatedly deemed fit to award interest @ 7.5% per annum and is of the opinion that even in the present case, the said rate of interest would be appropriate interest.

13. Keeping in view the abovesaid facts and circumstances, FAO-4652-2008 is partly allowed and the impugned award dated 28.08.2008 is modified and respondent No.3-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.9,35,958/- to all the appellants/claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of actual payment within a period of six weeks from today in the same proportions as the award. The appeal bearing FAO-4997-2008 filed by the Insurance Company deserves to be dismissed and is accordingly dismissed.

September 26, 2024 **(VIKAS BAHL)**
naresh.k **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No