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

214 **FAO-268-2007 (O&M)**
Date of Decision: July 25, 2024

Smt. Kelo Devi and others **......Appellant(s)**

Vs.

State of Haryana and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Dinesh Malik, Advocate
for the appellants.

Mr. P.P. Chahar, Sr. DAG, Haryana

Mr. Aseem Aggarwal, Advocate
for respondent/Insurance Company

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been preferred against the award dated 04.09.2006 passed in the claim petition filed under Section 166 of Motor Vehicles Act, by the learned Motor Accident Claims Tribunal, Jind (for short, 'the Tribunal), for enhancement of the compensation granted to the appellants, who are widow and children of the deceased.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that the on 29.01.2003, deceased Nirmal Singh was going towards Jind side from the place of his posting, while performing his duty and was driving the Motor Cycle No.HR-03-C-1603 on the correct left side of the road at a moderate speed. One Sube Singh, Head Constable was also the pillion rider. When they reached near factory of Diwan Bal Kishan, on Narwana-Jind Road, then at about 8:00 p.m. respondent No.3

driver of Bus bearing registration No.HR-56-1073 came in rash and negligent manner from the opposite side of the road and hit against the motor cycle of the deceased (Nirmal Singh). Consequently, they fell down on the road and sustained grievous injuries. They were immediately taken to General Hospital, Jind for treatment from where they were referred to PGIMS, Rohtak, where Nirmal Singh, succumbed to the injuries on 14.02.2003. The pillion rider-Sube Singh became permanently disabled due to the accident in question. Wife and children filed claim petition.

3. Upon notice, respondents appeared and denied the factum of claim.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> (i) Whether the accident in question resulting in the death of Nirmal Singh and the injuries on the person of Sube Singh, were caused on account of rash/ negligent driving of Haryana Roadways bus No. HR-56-1073 by respondent No.3 Sube Singh? OPP
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> (ii) If issue No.1 is proved, what is the amount of compensation to which the petitioners are entitled and from whom ? OPP
>
> (iii) Whether the respondent No.3 had no valid driving licence to drive the vehicle at the time of this accident? If so, to what effect ? OPR-4
>
> (iv) Relief.

5. After hearing the parties and considering the evidence on record, learned Tribunal awarded the compensation to the tune of Rs.5,70,000/- to the claimants/appellants

SUBMISSIONS OF THE COUNSELS

6. Learned counsel for the appellants contends that while deciding the claim petition, the salary of the deceased as per the Salary Certificate was Rs.7865/- per month whereas after calculating the amount it has been taken as Rs.6000/- per month. There are four dependents of the deceased. Future prospects are not given as per the judgment of Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Parany Sethi***. He further contends that the accident took place on 29.01.2003 and Nirmal Singh died on 14.02.2003 and the learned Tribunal has not granted admission charges of the hospital. Moreover, no amount was given for the consortium. He further submits that the multiplier was to be applied as 16 instead of 14 by learned Tribunal.

7. Per contra, learned counsel for Insurance Company submits that the award has rightly been passed and the compensation has been rightly granted. He submits that the salary is taken to be Rs.6000/- per month after deducting the income tax. He further contends that there is no proof of expenditure regarding hospitalization of the deceased, which is claimed.

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

9. It is undisputed fact that the deceased-Nirmal Singh was immediately taken to General Hospital, Jind for treatment on 12.01.2003, i.e. the date of accident and subsequently referred to PGIMS, Rohtak, where he succumbed to his injuries on 14.02.2003. Meaning thereby he remained in hospital for a period of almost 30 days.

10. The relevant portion of the award is reproduced as under:-

"12. At the time of assessing the compensation court has to see the income of the deceased and his age. It is in the statement of Smt. Kelo Devi (PE1) that the age of her husband at the time of death was 35 years and he used to earn Rs. 9000/- per month as he was posted as Head Constable in police department. Except her own statement petitioners have not produced any other reliable evidence regarding age and income of the deceased. They have produced postmortem report Ex. P7 conducted on the dead body of deceased Nirmal Singh which reveals that at the time of death the age of deceased Nirmal Singh was 38 years so without having any other reliable evidence court has to rely upon the postmortem report and the statement of Smt. Kelo for providing the age of the deceased. As such it is held that at the time of death the age of deceased Nirmal Singh was between 35 to 38 years.

13. Further court has to determine the income of the deceased, it is on the record that deceased Nirmal Singh was in the police department and posted as head constable. In order to prove his income petitioner has examined Sh. Balkar Singh (PW4) who deposed on the basis of the record regarding service of the deceased. According to him deceased Nirmal Singh was posted as Constable in the police department at Kaithal and he was getting Rs.7865/- per month as salary as such he has proved salary certificate Ex.P3. besides this, petitioners have also produced the copy *of mutation showing the agricultural land of the deceased but it has failed to produce any account regarding the agricultural income of the deceased while after death of Nirmal Singh, the agricultural land has been inherited by the petitioners with the result they have become owners in possession of the agricultural land and they will get the agricultural income after the death of deceased, if any, and it will not cause any loss to them.*

14 But it is the contention of petitioner's counsel that deceased also used to manage the agricultural land and he was having extra income to that of his salary. As such petitioners have requested for adding the agricultural income with that of the salary but 1 do not find any merit in his contention. Certainly, deceased was owner of some agricultural land as mentioned in the revenue record but after his death it has been inherited and it can be managed by the petitioners for driving the income while deceased was posted as head constable in police department at Kaithal and it is not possible that he was doing the work in the fields. So, in view of the same there appears to be no loss of agricultural income of the petitioners, but petitioners have certainly suffered loss of income due to the salary of the deceased. As per salary certificate, the income of the deceased was Rs.7865/- per month. According to which the total salary of the deceased Rs. 7865/- but carry home salary has not been shown. But under the service *rules, some deductions are to be compulsorily required like GPF, GIS which are not mentioned in the salary certificate but petitioner Sube Singh has placed service certificate Ex. Pl according to which there is deductions of Rs. 2000/- GPF Sures. Rs. 70/- F.T.S. and Rs. 30/- GIS. Thus there is total deductions of Rs. 2100/- per month. So, keeping in view nature of the job of both employee, I am of the view that on the same ratio the deductions are to be reduced from the salary of deceased Sube Singh as such after adjusting the deductions the carry home salary Rs. 6000/- per month and after deducting the 1/3 of personal expenses and his own expense and loss of income cum dependency becomes Rs. 4000/- per month. But it is the contention of petitioner's counsel that at the time of assessing the compensation total salary is to be considered. On this point he has cited authority cited as Harbhagwant Singh Dhillon Versus Haryana Roadways, Rewari and others 2006 (91) PLR 122 but I do not find any merit in his contention and cited authority is not applicable to the fact of the instant case because as per latest views of the Hon'ble Supreme Court in various pronouncement loss- cum-dependency is to be assessed on the basis of the carry home salary. Thus the loss-cum- dependency of the deceased to be considered Rs. 4000/- per month after deducting his 1/3 expenses. As already discussed that at the time of his death the age of the deceased was about 38 years. So, under the law suitable* *multiplier in this case will be 14. So, the compensation after applying multiplier it becomes Rs.5,60,000/- Petitioners might have suffered some expenses on the last rites of the deceased besides the suffering of loss of estate, so, on this account they are also entitled for compensation and it is fixed Rs. 10,000/- only. Thus the total amount is payable to the petitioner becomes Rs. 5,70,000/- (Rs. Five lacs seventy thousand only) and all the petitioners are entitled for equal shares."*

11. Considering the loss of life, a perusal of the above shows that the compensation granted to the appellants/claimants is on the lower side.

SETTLED LAW ON COMPENSATION

12. 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 Thomas[3], 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.

13. 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 Rajesh[2]. 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 Verma*[4] *which we have reproduced hereinbefore.*

__59.6.__ The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] 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."

14. 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 Sethi[2] 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 Sethi[2]. 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.*

ANALYSIS

15. A perusal of the above shows that in the present case, the consortium has not been granted and multiplier is calculated as 14 whereas it should have been 16. So far as the contention of the learned counsel for the appellants to the extent of consortium and multiplier is concerned, the same is accepted. So far as funeral expenses and loss of the estate are concerned, only Rs.10,000/- has been granted, which is also on the lower side. It also requires to

be enhanced. The appellants/claimants are further entitled to Rs.20,000/- for medical expenses incurred during the hospitalization of the deceased-Nirmal Singh.

16. 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 04.09.2006 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made hereunder:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.6,000/-
2	Future prospects @ 50%	Rs.3,000/- (50% of 6000)
3	Deduction towards personal expenditure	Rs.2250/- [1/4 of (6000+3000)]
4.	Total Income	Rs.6750/- (9000-2250)
4	Multiplier	16
5	Annual Dependency	Rs.12,96,000/-
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- x 3 Spousal : Rs.48,000/-	Rs.1,92,000/-
9	Medical Expenses	Rs.20,000/-
	Total Compensation	**Rs.15,44,000/-**
	Amount Awarded by the Tribunal	**Rs.5,70,000/-**
	Enhanced amount	**Rs.9,74,000/-**

17. 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 Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellants-claimants are granted the

interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the accounts of all the claimants/appellants in the claim petition No.36 filed in the year 2003 in the same ratio as was granted by the Tribunal in the award dated 04.09.2006 i.e. the amount of compensation shall be shared by the appellants/claimants equally. Appellants/claimants are directed to furnish their bank accounts detail to the Tribunal. Further, the Tribunal is directed to disburse the enhanced amount in their respective accounts as per the ratio settled in the award dated 04.09.2006.

19. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

July 25, 2024
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Whether speaking/reasoned: Yes
Whether reportable: Yes