IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

214 **FAO-693-2007 (O&M)**
Date of Decision: October 03 2024

Manju and others **......Appellant(s)**

Vs.

Babloo Singh and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Manisha Nehra, Advocate for
Mr. Vijay Pal, Advocate for the appellants.

Mr. Nakashvir Singh Aulakh, Advocate for
Mr. V.M. Gupta, Advocate for respondent No.3.

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate for respondent No.5.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 08.06.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Moga (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 1.3.2004, Ishwar Kalia (since deceased) alongwith his family members and Dharam Vir Bharadwaj were going from Moga to Delhi by Indica car bearing registration No.PB-10AM-2439 being driven by Harwinder Singh. When they reached near village Dhat, a truck bearing registration No.HR-58-

4083 (hereinafter referred to as ‘offending vehicle’) came at a very high speed and without blowing any horn struck against their car which completely came underneath the offending vehicle. All the occupants of the car died at the spot. It is further alleged in the claim petition that the truck was being driven by respondent No.1 at a very high speed, rashly and negligently. The accident had taken place due to rash and negligent act of respondent No.1 while driving the truck. The accident was witnessed by Gurdeep Singh on whose statement the FIR was lodged against Babloo Singh-respondent No.1.

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 accident has been caused by respondent No.1 Babloo due to his rash and negligent act of driving truck bearing registration No.HR-58-4083?OPP*
> *2) Whether the claimants are entitled to compensation, if so to what extent and from whom ? OPP*
> *3)Whether Indica car bearing registration No. PB-10-AM-2439 was insured with respondent No.5 National Insurance Company ? OPR.*
> *4) Whether the driver of the Indica car owned by respondent No.4 was not rash and negligent act ? OPR4*
> *5) Whether the driver of the offending vehicle was not having valid driving licence?OPR*
> *6) Whether the offending vehicle i.e.truck was not being driven as per the conditions of the Insurance policy, if so its effect? OPR3.*
> *7) 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.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6 Learned counsel for the appellants contends that the claim petition was dismissed only on the ground that no eye witness had established the identity of the driver who had allegedly caused the accident. He further contends that family pension is much above the dependency as assessed by the tribunal. Therefore, he prays that present appeal be allowed.

7. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that claim petition has rightly been dismissed.

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

9. The relevant portion of the award dated 08.06.2006 is reproduced as under:-

> *"10. In order to prove that respondint No.1 Babloo had caused the accident with the allegedly offending truck bearing registration No.HR-58-4083, the claimants had examined PW2 Gurdeep Singh who is an employee in the Nestle Factory Moga and is working as driver. On the fateful day i.e.on 1.3.2004 he was going from Moga to Chandigarh. Dharamvir Singh was going ahead of him. He was accompanied by his family. When they reached near village Dhat, then a truck being driven rashly had struck the Indica car of the deceased Dharamvir and with this impact the Indica car was dragged into the ditches by the side of the road. The car was completely crushed under the truck. All the persons had died at the spot. The registration number of the truck is HR-58-4083. The truck driver was*

present at the spot but when this witness had tried to take out the car from the ditches the truck driver had ran away from the spot. Then police was informed. In his entire oral testimony, he has not named as to who was the truck driver. So, the identity of the truck driver remained to be established by this so called eye witness. However, he had stated that his name was informed to him later on. But even then he had not named the driver of the truck. In cross-examination, he had admitted that he had got the FIR registered which is Ex. P1. On the day of occurrence, the deceased who was driving, the car was going to Chandigarh but they had no conversation between them.

This witness was having no previous intimacy or personal relationship with the truck driver which was put to him in the cross-examination as Babloo. He had admitted that at the spot of accident, the road is about 40 feet wide. He had also admitted that there is huge traffic on this road and volunteered that at the time of accident the traffic was less. He had also admitted that on one side of the accident there is inhabited area of the village and on the other side, there is rice sheller. The people had collected at the spot after hearing the sound created by the accident but he had testified that he do not know the name or particulars of any of the persons. He had also admitted that he had not talked with any person regarding the accident of the Indica car with the allegedly offending truck. So, this makes his presence at the spot suspicious at the time of accident. In this manner, the only eye witness examined i.e. PW2 Gurdip Singh had failed to establish that respondent No.1 Babloo was the driver and he was driving the truck rashly and negligently which had consequently caused the accident in question. In view of the tenor in which this witness had deposed the liability cannot be fixed upon the driver Babloo

> *and since the main person, who had allegedly caused the accident as mentioned in the petition had not been proved on record by any of the witness. So, the petition cannot succeed under these circumstances. This issue is decided against the claimants in favour of the respondents.*

10. A perusal of the award shows that the Ld. Tribunal observed in the award that Gurdeep Singh who was eye witness to the accident and was examined as PW-2 stated the whole factum of accident and even registration number of truck was stated by him in his evidence. Gurdeep Singh further stated that driver was present on the spot and when he tried to take out the car from the ditches, truck driver ran away from the spot.

11. Further, only on the ground that identity of truck driver remained to be established by eye witness (Gurdeep Singh), the claim petition was dismissed. Though it has been observed that he stated that the name of the driver was informed to him later on. He is the author of the FIR as well, which was placed on record as Ex.P1. The reasoning given by Ld. Tribunal is not acceptable to this Court.

12. A perusal of the record further shows that the factum of accident is proved. The FIR is lodged. The post mortem report Ex.P-2 is on record. In the remarks by the Medical Officer in the post mortem report, it is stated that the cause of death is result of road side accident. Thereafter the body was handed over to the police.

13. 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.

14. Regarding compensation, the Ld. Tribunal has discussed in para No.11 of the Award which shows income etc. of the deceased.

15. After deducting the tax payable, which is Rs. 96,465/-net annual income of the deceased comes out to be Rs.2,54,019/-. Therefore, the monthly income of the deceased is assessed as Rs.21,168/- (Rs.2,54,019 ÷12).

16. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 08.06.2006 passed by Ld. Tribunal, Moga stands vitiated by a complete absence of judicial application of mind.

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.

***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.*

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;

(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."*

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 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.*

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 08.06.2006 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.21,168/-
2	Future prospects @ 25%	Rs.5292/- (25% of 21,168)
3	Deduction towards personal expenditure ¼	Rs.6615/- [¼ th of (21688+5292)]
4.	Total Income	Rs.19,845 (26,460-6615)
4	Multiplier	14
5	Annual Dependency	Rs.33,33,960/-(19845 x 12 x 14)
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/- X 1 Filial : Rs. 48,000/- X 1	Rs.2,40,000/-
	Total Compensation	**Rs.36,09,960/-**

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. 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 appellant No.1 who is widow of deceased is entitled to receive the compensation to he extent of 60% whereas the other appellants who are children and mother of deceased are entitled to receive the remaining amount of compensation in equal shares. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

23. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

October 03, 2024
sonia arora

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