



FAO-5084-2006 (O&M)

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

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Date of Decision: September 05, 2024

Darshana and another

.....Appellant(s)

Vs.

Manoj Kumar and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Manav Dhull, Advocate for
Mr. Ramesh Hooda, Advocate
for the appellants.

Mr. Rajesh Sharma, Advocate
for respondents No.1 and 2

Mr. R.C. Gupta, Advocate
for respondent No.3-Ins. Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 03.08.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sonipat (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 are that on 09.01.2005, Rohtash and his brother Satpal were waiting for arrival of some vehicle at Kharkhoda for going to their village Mathindu when respondent No.1, who was resident of the same village came there while driving his tractor bearing registration No.HR-10-F-

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them lift on his tractor. Soon after crossing Kharkhoda town, respondent No.1 started driving his tractor in a rash, negligent and zigzag manner inspite of the request of Rohtash to drive it carefully. As a result of rash and negligent driving of respondent No.1, Rohtash fell down from the tractor and sustained multiple injuries. He was taken to C.H.C Kharkhoda by his brother-Satpal, where the doctor declared him brought dead. On the next day, Satpal got registered FIR No.7 dated 10.01.2005, under Section 279/304-A of IPC at Police Station Kharkhoda.

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 the death of Rohtash took place due to rash and negligent driving of tractor No. HR-10-F-7568 by respondent No.1? OPP.

2. Whether the claimants are the only legal representatives of the deceased and entitled to compensation, if so, how much and from whom?OPP.

3. Whether respondent No.1 was not holding a valid driving licence at the time of accident, if so, its effect? OPR-3.

4. 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.



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SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the appellants-claimants contends that the Ld. Tribunal has committed an error while not awarding any compensation to the appellants/claimants on the ground that the deceased-Rohtash was travelling as a gratuitous passenger on the tractor and the tractor being vehicle specifically meant for agricultural purposes only, thus, the appellants/claimants are not entitled to any compensation. Therefore, he prays that present appeal be allowed and the appellants/claimants be granted compensation.

7. Per contra, learned counsel for the respondent-Insurance company has vehemently argued that the deceased-Rohtash himself fell down from the tractor upon which he was travelling as a gratuitous passenger and therefore submits that the Tribunal had rightly dismissed the claim petition.

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

9. The relevant portion of the award dated 03.08.2006 is reproduced as under:-

“ISSUE NO.2

10. The accident took place on 9.1.2005 at about 8.30 PM and the report of this accident was lodged by Satpal, brother of deceased Rohtash, with Police Station, Kharkhoda at 12.20 AM on 10.1.2005 i.e. within four hours of the accident. The number of tractor as well as name of its driver have been mentioned in the FIR. The version of the accident given in the FIR has been fully supported before the Tribunal by Satpal while appearing as PW-4. There is also no dispute that Rohtash was traveling on tractor No.7568 which was being driven at the time of accident by Manoj Kumar. It has been mentioned in the FIR Ex.PB and has also been deposed before the Tribunal by Satpal that respondent no.1 was driving his tractor rashly, negligently and in a zigzag manner and inspite of request of



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deceased Rohtash, respondent no.1 did not slow down the speed and on reaching near a drain, Rohtash fell from the mudguard of the tractor because of its rash driving by respondent No.1. There is also no dispute that Rohtash suffered injuries in the accident as a result of which he died before reaching the hospital. The copy of his post mortem report is Ex.PA. So, this issue is decided in favour of the claimants.

*"11. As already held in issue No.1, the death of Rohtash took place due to rash and negligent driving of tractor No. HR-10F-7568 by respondent No.1. But the controversy in this case is whether the claimants, who are the legal representatives of deceased Rohtash, are entitled to compensation when the death of Rohtash took place by falling from the mudguard of a tractor upon which he took a lift of his own. The matter came up for consideration first of all before our own Hon'ble High court in case "The New India Assurance Company Limited Versus Smt. Tarawati and others, (1994-2) PLR page 103". It was laid down therein that the tractor is not meant for carrying passengers and whosoever takes a ride on it shall be doing so at his own risk. It was further laid down that neither the driver nor its owner can be held liable and if it is insured, no liability can be fastened on the insurance company. However, the matter again came up for consideration before a single Bench of our own Hon'ble High Court in case "The New India Assurance Company Limited Versus Vidya Devi and others, (2001-1) PLR Page 396" wherein it was held that a tractor fitted with a trailer/ trolley is a motor vehicle and the insurance company is liable for payment of compensation to the legal representatives of a person who dies while traveling on a tractor by sitting on its mudguard. While taking this view, our Hon'ble High Court placed reliance mainly upon the judgment of Hon'ble Supreme Court rendered in case "The new India Assurance Company Limited Versus Satpal Singh, (2000-1) PLR page 464". The matter again arose before a Bench of three Judges of Hon'ble Supreme court in "**National Insurance Company Ltd.***



Versus Chinnamma and others, 2005 (1) LJR page 145". It was laid down therein after discussing various authorities and the provisions of Motor Vehicles Act, as those stood before the amendment of 1994 and after the amendment effected in 1994, that tractor is meant to be used for agricultural purposes and the insurance company is not liable to pay compensation even to the owner of the goods goods traveling in the tractor with his goods because the tractor is not a goods carrier, it is meant to be used for agricultural purposes and not for commercial use. It has been mentioned in para No.7 of this judgment that the decision rendered by the Hon'ble Supreme Court in "The New India Assurance Company Limited Versus Satpal Singh" was over ruled by the Hon'ble Supreme Court in a later judgment rendered in "The New India Assurance Company Limited Versus Asha Ram and others, 2003 (2) SCC page 223". Since the judgment rendered in Satpal Singh's case (Supra) has been over rule by the Hon'ble Supreme Court itself in a subsequent judgment, the law laid down by our own Hon'ble High Court in Vidya Devi's case (supra) relying upon Satpal Sigh's case cannot be held applicable to award compensation to the claimants for the death of Rohtash, who fell from the tractor while traveling by sitting on its mudguard.

12. So, in view of the latest law laid down by the Hon'ble Supreme Court in case "**National Insurance Company Ltd. Versus Chinnamma and others**", the claimants are not entitled to any compensation for the death of Rohtash, who himself took a lift on the tractor and succumbed to the injuries suffered by him after falling from the tractor. This issue is, therefore, decided against the claimants."

10. A perusal of the record indicates that Issue No.1 i.e. "Whether the death of Rohtash took place due to rash and negligent driving of tractor No. HR-10F-7568 by respondent No.1?" is decided in favour of the appellants/claimants, however, the petition of the claimants was dismissed solely on the ground that



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the tractor upon which he took lift. However, this Court is not satisfied of the reasons given by the Ld. Tribunal for dismissing the claim petition on the issue of granting compensation. The question of liability in cases where a passenger is seated on the mudguard of a tractor is no longer *res integra*. The Hon'ble Supreme Court in case titled as "**Shivraj Vs. Rajendra and another**", **2018(10)SCC432** has definitively settled this issue holding as follows:-

"10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swarna Singh & Ors., 2004(2) RCR (Civil) 114: (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656, Rani & Ors. v. National Insurance Co. Ltd. & Ors., 2018(3) RCR (Civil) 979: 2018 (9) Scale 310 and including Manuara Khatun and Others v. Rajesh Kumar Singh And Others, 2017(2) RCR (Civil) 108: (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).

11. Further this Court in FAO No.4556 of 2006 titled as **Ram Diya and another Vs. Sanjay @ Sanjeev Kumar and others** held as under:-

*" 19. In view of the above referred to judgments of Hon'ble the Supreme Court in "**Shivraj and Kalim Khan** (supra), the question of liability is no longer *res integra* as it has been that since the deceased was a gratuitous passenger sitting on the mudguard of tractor (offending vehicle), the Insurance Company*



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would be liable to recover the amount of compensation from the driver and owner of the offending vehicle.”

12. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 03.08.2006 passed by Ld. Tribunal, Sonipat stands vitiated by a complete absence of judicial application of mind.

13. Since Issue No.2 i.e. *“Whether the claimants are the only legal representatives of the deceased and entitled to compensation, if so, how much and from whom?”* was not decided by the Ld. Tribunal, therefore, this Court decides as follows:-

i) A perusal of the record reveals that the deceased-Rohtash was working an agriculturist and maintaining buffaloes, his income was asserted to be Rs.20,000/- per month. However, under the prevailing facts of the present case, his income is to be assessed as Rs. 2500/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Haryana.

SETTLED LAW ON COMPENSATION

14. 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 Thomas³, 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

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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.

15. 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 Rajesh². 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 Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ 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.”

16. 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 Sethi² 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 Sethi². 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.

CONCLUSION

17. 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 03.08.2006 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.2500/-
2	Future prospects @ 40%	Rs.1000/- (40% of 2500)
3	Deduction towards personal expenditure	Rs.875/- [1/4 of (2500+1000)]
4.	Total Income	Rs.2625/- (3500-875)
4	Multiplier	15
5	Annual Dependency	Rs.4,72,500/-(2625 x 12 x 15)
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.7,48,500/-

18. 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 compensation amount from the date of filing of claim petition till the date of its realization.



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19. The Insurance Company is directed to deposit the 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 claimants/appellants are directed to furnish their bank account details to the Tribunal.

20. Respondent No.3-Insurance Company is directed to pay the compensation in the first instant and liberty is granted to respondent No.3 to recover the same from respondents No.1 and 2.

21. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 05, 2024

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