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

FAO-5040-2006 (O&M)
Date of Decision: November 29, 2024

Hans Raj and another ......Appellants

vs.

Mohit Mittal and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Hans Raj, Appellant No. 1 in person.

Mr. Vikas Mohan Gupta, Advocate
for respondent-Insurance Co.

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SUDEEPTI SHARMA J. (Oral)

1. The present appeal has been preferred against the award dated 10.04.2006 passed by the learned Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal'), for enhancement of compensation granted to the claimant to the tune of Rs.1,70,000/- along with interest @ 7.5% per annum in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, on account of death of their son namely Arun Kumar Chauhan in a Motor Vehicular Accident, occurred on 09.02.2005.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case are not reproduced for the sake of brevity.

SUBMISSION OF APPELLANT No. 1

3. Appellant No. 1, who is present in the Court today has informed the Court that his counsel is not present today. He submits that the compensation

awarded by the learned Tribunal is on the lower side and deserves to be enhanced. Therefore, the present appeal be allowed and the enhanced compensation be awarded to the appellant as per latest law

SUBMISSION OF LEARNED COUNSEL FOR THE INSURANCE COMPANY

4. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation, as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

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

6. A bare perusal of the record shows that it is evident that this case is arising from a motor vehicular accident relating back to the year 2005 and involves the untimely demise of the appellant's son. It is a matter of deep concern that cases of such a nature, involving immense emotional and financial sufferings, requires prompt resolution to avoid undue delays in adjudication.

7. Keeping in view the fact that appellant No. 1 is present in person in the Court today and is seeking enhancement of amount of the award, therefore, this Court deems it fit to finally adjudicate the case by deciding the case on merits without any further delay.

8. A bare perusal of the record shows that it is evident that this case arising the deceased- Arun Kumar Chauhan was working as a clerk with Alliance Telecom and was getting the salary of Rs.3300/- per month. Therefore, his income is to be assessed as Rs.3300/- per month. Moreover, no amount was awarded for loss of consortium; loss of estate. The compensation awarded for funeral expenses, transportation and medical expenses is on the lower side. The learned Tribunal has

also erred in law in not granting future prospects to the appellants. Therefore, the award requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

9. With regard to grant of future prospects in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case ***Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023 (1) R.C.R (Civil) 349*** wherein Hon'ble the Supreme Court has held as under:-

> *"18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place."*

In view of the above judgment, the claimants/appellants are also entitled to future prospects on account of death of their son.

10. *The* claimants are also entitled for pain and suffering in view of judgment of Hon'ble the Apex Court in a case of ***Divisional Manager, Oriental Insurance Co. Ltd vs. Maran Chandra Das and others, 2023 ACJ 864*** wherein it has been held as under:-

> *Having heard learned counsel for the petitioner at a considerable length, we do not find any ground to interfere with the impugned judgment dated 7.1.2021 passed by the High Court of Tripura.*

2. The question of law sought to be raised on behalf of the petitioner does not arise for consideration for the reason that the deceased son of the respondent(s) met with an accident on 20.10.2015 and he remained hospitalised at Kolkata where multiple surgeries were performed on him. However, he could not survive and succumbed to injuries on 13.9.2016.

3. In the peculiar facts and circumstances of this case, where the parents witnessed the pain, agony and suffering of their son for almost one year, the compensation awarded by the High Court, under the head of pain and suffering, cannot be said to be without any basis. The parents themselves also suffered unbearable pain every moment during this entire period"

11. In view of the above referred to **judgment (supra)**, the claimants/appellants are held entitled for grant of compensation under the head of pain and suffering, as the deceased remained admitted in the hospital w.e.f 09.02.2005 to 14.04.2005.

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.*

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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.*

CONCLUSION

15. 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

10.04.2006 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	***Heads***	***Compensation Awarded***
1	Monthly Income	Rs.3300/-
2	Future prospects @40%	1320 (40% of 3300)
3	Deduction towards personal expenditure ½	2310 (4620X1/2)
4.	Total Income	2310 (4620-2310)
4	Multiplier	18
5	Annual Dependency	Rs.4,98,960/- (2310X18X12)
6	Medical expenses	Rs.15000/-
7.	Pain and sufferings	Rs.1,00,000/-
7.	Loss of Estate	18,000
8.	Funeral Expenses	18,000
	Loss of Consortium Filial : 48000X2	Rs.96,000/-
	Total Compensation awarded	**Rs.7,45,960/-**
	Amount Awarded by the Tribunal	**Rs.1,70,000/-**
	Enhanced amount	**Rs.5,75,960/- (745960-170000)**

16. 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.

17. The Insurance Company-respondent No. 3 is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a

period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of the claimants/appellants, as per ratio settled by the Tribunal in its award dated 10.04.2006. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

18. Further Insurance Company is directed to disburse the current schedule fees to Mr. Vikas Mohan Gupta, within a period of ten days from the date of receipt of certified copy of this order.

19. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 29, 2024
Gaurav Arora

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