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

**FAO-4220-2012 (O&M)**
Date of Decision:-**07.02.2024**

SMT. BIMLA AND ANR.

... Appellants

Versus

KRISHAN KUMAR AND OTHERS

... Respondents

**CORAM: HON'BLE MRS. JUSTICE RITU TAGORE**

Present:- Mr. Divansh Khanna, Advocate for
Mr. Vaibhav Narang, Advocate
for the appellant(s).

Mr. Rajbir Singh, Advocate
for respondent No.3-Insurance Company.

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**RITU TAGORE, J**. (Oral)

1. This appeal has been filed by parents, seeking enhancement of compensation amount, awarded vide order dated 19th January, 2012 passed by learned Motor Accident Claims Tribunal, Jhajjar (hereinafter to be referred as 'the Tribunal'), on account of death of Surender, in a motor vehicular accident dated 07.11.2010.

2. On 07.11.2010, at about 02.00 p.m, Surender and Sachin were walking towards village M.P. Majra in District Jhajjar, when they were hit by an Eicher Canter bearing registration No.HR-56-7539, driven by respondent

no 1 in a rash and negligent manner. Surender sustained serious injuries in the accident and later succumbed to them. FIR No.315 dated 7th November, 2010 registered under Sections 279, 337, 304-A IPC at Police Station, Beri, Jhajjar was registered, against the respondent No.1/driver, regarding the accident.

3. Claimants- parents of deceased, filed the petition under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for death of Surender, seeking compensation to the tune of ₹50,00,000/-, stating that deceased was aged about 18 years and a brilliant student. He was earning ₹25,000/- per month by doing tuition, agriculture and dairy farming work.

**4.** Respondents (driver, owner and insurer) filed their respective pleadings, denied the averments of the claimants as to cause and manner of the accident, age and income of the deceased, dependency of claimants upon deceased and their entitlement to seek compensation. Further, respondents No.1 and 2 alleged their false implication in this present case at the behest of the claimants. Respondents No.3 also plead that respondent No.1 had no valid and effective driving license on the date of accident and denied their liability to pay any compensation to the claimants.

5. On the pleadings of the parties, the Tribunal framed following issues:-

i. Whether the accident occurred due to rash and negligent driving of vehicle No.HR-56-7539 by respondent No.1? OPP

ii. Whether petitioners are entitled to recover compensation from the respondents? If so to what extent? OPP

iii. Whether respondent No.1 had no valid and effective driving licence on the day of accident? OPR

iv. Relief

6. Learned Tribunal, on assessment of evidence, answered the issues in favour of the claimants and passed the award for ₹2,36,000/- along with interest @ 7.5% per annum from the date of filing of the petition till its realization and made respondents jointly and severally liable to satisfy the award. Being dissatisfied with the awarded amount, the claimants, preferred this appeal.

7. Learned counsel for the appellants have assailed the findings on the grounds that learned Tribunal erred in assessing income of the deceased, who was an 18- year-old young man with a bright future. The deceased was earning the claimed income by giving tuition, agricultural work and running a milk diary. It is argued that even minimum wages prevailing at that time, for an unskilled worker were ₹4,500/- per month, yet the learned Tribunal determined monthly income at ₹2,000/-, less than the minimum wages. Submitting that the income should not have been assessed as lower than the minimum wages. It is further contended that the learned Tribunal has committed serious error while awarding nothing on account of future prospects. The amount awarded under the conventional heads is not in consonance with the law laid down by Hon'ble the Supreme Court in **National Insurance Company vs. Parnay Sethi, 2017(4) RCR(Civil) 1009**.

8. Contrary, learned counsel for respondent No.3-Insurance Company stated that income of the deceased has been rightly determined @ ₹2,000/-. The deceased being bachelor, deduction of 50% has been rightly made by the learned Tribunal, and requires no interference by this Court. However, the learned counsel for Insurance Company could not deny that grant of compensation under the conventional heads, non-grant of future prospects are not in consonance with the directions laid down in **Parnay Sethi's** case (supra) and followed in various other consequent judgments.

9. Learned counsels for the parties have agreed that present appeal be decided on the basis of material available in the paper book.

10. I have heard learned counsel for the parties and have perused the paper book.

11. There is no dispute that Surender died in road accident on 7th November, 2010 involving the offending vehicle. Learned counsel for the Insurance Company was unable to deny that deceased was 18 years of age at the time of accident, and that minimum wages for an unskilled worker were ₹4,348/- per month . It is undispute that deceased was unmarried. Learned counsel for the appellants/claimants also could not deny that no documentary proof has come on record as to the occupation and income of the deceased. However, learned Tribunal, in assessing the income of the deceased, failed to appreciate that deceased was young boy of 18 years of age with a bright future. Even considering the minimum wages prevailing at that time were ₹4,500/-pm , the determination of ₹2,000/-,pm by the Learned tribunal is significantly lower and cannot be justified. Hence the income of the deceased is assessed as ₹4,348/- per month, based on minimum wages .

12. Similarly, non grant of future prospects on the income of deceased and selection of multiplier on basis of the age of parents, than on basis of age of the deceased has been assailed by learned counsel for claimants, being contrary to the principles culled out in *Pranay Sethi* (supra). Multiplier of 18 on basis of age of the deceased and grant of future prospects at 40% have been urged by the counsel for the claimants, to be taken, while calculating the compensation.

13. Admittedly, in present case, learned Tribunal has taken the multiplier on the basis of age of parents, which is certainly not in accordance with the directions laid down in ***'Sarla Verma and others vs. Delhi Transport Corporation and another' 2009 (3) R.C.R. (Civil) 77*** and in ***'Amrit Bhanu Shali and others vs. National Insurance Company Ltd. and others' 2012 (11) SCC 738,*** Hon'ble the Supreme Court has observed as under :-

> "17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation."

Further, in ***Pranay Sethi (supra)***, it is observed that the age of deceased should be the basis for applying the multiplier.

14. In present case, claimants are parents of the deceased. Considering the age of deceased, multiplier of 18 deserves to be applied as per the Table provided in the judgment delivered by Hon'ble the Supreme Court in ***Sarla Verma (supra)***, which was approved by the Constitutional Bench judgment in ***Pranay Sethi (supra)*** and followed in various subsequent

judgments.

15. Perusal of award shows that no amount was granted towards 'loss of estate', 'loss of filial consortium' to parents of deceased. In ***Pranay Sethi (supra)***, judgment delivered on 31.10.2017, Hon'ble the Supreme Court observed as under :-

> "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.
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> 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.
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> 59.8 Reasonable figures on the 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. The aforesaid observations were reiterated in ***'Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 Supreme Court Cases 130*** observing that parents losing their

minor child or unmarried son/daughter in motor accident are entitled to be awarded compensation for 'loss of consortium' under the head of 'filial consortium'. In ***'Kirti and another etc. vs. Oriental Insurance Co. Ltd. 2021 (2) SCC 166*** observed that future prospects can be granted in cases pertaining to notional income. Hon'ble the Supreme Court in its latest judgment ***'Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others' 2023 (3) R.C.R. (Civil) 573*** while relying upon other judicial precedents including ***Pranay Sethi (supra)*** and ***Sarla Verma (supra)*** in paragraph No.33 observed as under :-

> "33. In the present case, the MACT had granted a meager amount of ₹5,000/- towards loss of consortium. However, the High Court granted a total amount of ₹70,000/- as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In the case of Pranay Sethi (supra), Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded ₹40,000/- to each of the dependents. Considering the same, an amount of ₹40,000/- each is awarded to each of the four dependents towards loss of consortium."

17. In view of the aforesaid settled legal principles, culled out in numerous judicial decisions, the claimants are entitled to be compensated under the conventional heads. The award amount is re-determined as below :-

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|---|
| Name of the deceased – Surender<br>Age – 18 years<br>Status – Unmarried<br>Amount given by learned MACT – ₹2,36,000/-<br>along with 7.5% interest per annum |

| Reassessment of award amount | | |
|---|---|---|
| **Sr. No.** | **Heads** | **Income (in Rupees)** |
| 1. | Annual Income | ₹52,176/ |
| 2. | Deduction 1/2 being unmarried | ₹26,088/- |
| 3. | Future prospects 40% in view of **Pranay Sethi and Kirti** (supra) | ₹36,523/- (₹26,088/- + ₹10,435/- ) |
| 4. | Multiplier | 18 |
| 5. | Total loss of dependency | ₹6,57,414/- (₹36,523 x 18) |
| 6. | Loss of estate (10% increase in every three years in view of Pranay Sethi (supra) | ₹18,150/- |
| 7. | Loss of funeral expenses (10% increase in every three years in view of Pranay Sethi (supra) | ₹18,150/- |
| 8. | Loss of filial consortium x 2 claimants (10% increase in every three years in view of Pranay Sethi (supra) | ₹96,800/- |
| 9. | Total | ₹7,90,514/- |

18. After deducting the amount already awarded by the learned Tribunal, the enhanced amount of compensation is held to be ₹5,54,514/- (₹7,90,514/- **-** ₹2,36,000/-). Thus, claimants are entitled to ₹5,54,514/- over and above, the amount already granted by learned Tribunal, along with same rate of interest as granted by learned Tribunal from the date of filing the petition till its realization, payable within 30 days from the date of receipt of certified copy of this judgment. Remaining conditions of disbursal of amount as given by learned Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by Insurance company shall be adjusted.

19. No other point was raised or pressed.

20. Accordingly, appeal preferred by the claimants is allowed in the above terms.

19. No order as to cost.

20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

**( RITU TAGORE)**
**JUDGE**

**07.02.2024**
**Gaurav Sorot**

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|---|---|
| Whether reasoned / speaking? | Yes / No |
| Whether reportable? | Yes / No |