286

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-3035-2016 (O&M)
Date of decision: 02.08.2024

Saloni Gupta and others

...Appellants

Versus

Faqir Ali and others

...Respondents

2. FAO-5698-2016 (O&M)
Date of decision: 02.08.2024

Subhash Chander and others

...Appellants

Versus

Faqir Ali and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikas Kumar Gupta, Advocate for the appellants.
(In both the appeals)

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.
(In both the appeals)

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VIKAS BAHL, J. (ORAL)

1. The present order would dispose of two FAOs, i.e., FAO Nos.3035 and 5698 of 2016. FAO No.3035 of 2016 has been filed by five appellants being the wife, three children and the mother of the deceased-

Munish Kumar. FAO No.5698 of 2016 has been filed by three appellants being the husband and two children of the deceased-Kanchan Gupta. Both the claim petitions have been decided by the Motor Accident Claims Tribunal vide two separate orders of the same date i.e. 17.11.2015.

2. The fact that Munish Kumar and Kanchan Gupta died in the same accident with the offending vehicle which was being driven by respondent No.1 and was owned by respondent No.2 and was insured by respondent No.3 is not in dispute. Learned counsel for the claimants-appellants in both the cases has submitted that the amount awarded by the Motor Accident Claims Tribunal in both the cases is inadequate and has prayed for enhancement.

3. With respect to FAO No.3035 of 2016, the claim of compensation with respect to the death of Munish Kumar it has been submitted that the Tribunal had awarded an amount of Rs.43,00,000/- along with interest whereas an additional amount of Rs.3,18,800/- is to be awarded to the claimants. It is submitted that the future prospects in the case of Munish Kumar has been taken to be 30% by the Motor Accident Claims Tribunal whereas the same should have been taken as 40% as the age of the deceased at the time of death was 35 years. It is further submitted that a total amount of Rs.75,000/- has been given on account of other heads whereas an amount of Rs.2,40,000/- (Rs.48,000/- x 5) should have been granted on account of loss of consortium and in addition, an amount of Rs.36,000/- (Rs.18,000/- x 2) for loss of estate and funeral expenses should have been granted. It is further submitted that the said amount be paid to the appellants with the interest at the rate of 7.5% per annum from the date of filing of the claim

petition till its realisation. In support of his arguments, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme Court in case titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported as ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***.

4. On the other hand, learned counsel for respondent No.3-Insurance Company has submitted that in the present case Rs.6500/- had to be deducted from the yearly income of the deceased which has not been done in the present case and thus, the total income has been wrongly calculated. However, he could not dispute the other aspects raised by learned counsel for the appellants which are in accordance with the settled law.

5. Learned counsel for the appellants has submitted a revised chart with respect to the case of Munish Kumar after taking into consideration the objection raised by learned counsel for respondent No.3-Insurance Company. The said chart is reproduced hereinbelow:-

Claim under Section 166 MV Act		
Date of Accident		28.12.2014
Deceased		Munish Kumar (35 years)
Claimants:-	Widow (34)	
	Son (7)	
	Daughter (13)	
	Daughter (10)	
	Mother (65)	
Award	Rs.43 lacs + 9% interest	

Particulars	MACT	Appeal
Yearly income	Rs.2,65,000/-	Rs.2,65,000/- - Rs.6500/- = Rs.2,58,500/-
Future Prospects	30%	40%
Deductions	1/4th	1/4th
Income Assessed	Rs.2,58,375/-	Rs.2,71,425/-
Multiplier	16	X 16
		Rs.43,42,800/-
Other heads	Rs.75000/-	Rs.2,40,000/- (Rs.48,000 x 5)
	Rs.42,09,000/-	Rs.36,000/- (Rs.18,000 x 2)
	Rounded off	Rs.46,18,800/-
	Rs.43,00,000/-	(-) Rs.43,00,000/-
		Rs.3,18,800/-

6. This Court has heard learned counsel for the parties and has perused the paper book and has also considered the said revised chart and the same has been found to be in accordance with law.

7. Hon'ble the Supreme Court in para 42 of ***Sarla Verma's case*** (Supra) had observed as under:-

> *"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, 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."*

8. A perusal of the above would show that for the age of 35 years and 50 years, multiplier of 16 and 13 respectively is to be applied.

9. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra),

has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *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 paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.*

> ***59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 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.***
> *60. The reference is answered accordingly. Matters be placed before the appropriate Bench."*

10. A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which required to be enhanced at the rate of 10% in every three years.

11. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium, children are entitled to parental consortium. To the widow, spousal

consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi 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,co-operation, 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 recognized 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 5. 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 (supra). 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."

12. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

13. In the revised chart, future prospects at the rate of 40% has been correctly mentioned since the age of the deceased was 35 years and an amount of Rs.2,40,000/- (Rs.48,000/- x 5) for loss of consortium has also

been correctly mentioned and since there were five claimants an amount of Rs.36,000/- (Rs.18,000/- x 2) on account of loss of estate and funeral expenses has also been rightly mentioned in the revised chart, which is as per the settled law. With respect to the rate of interest, this Court is consistently awarding the rate of interest at the rate of 7.5% per annum, which rate of interest is also reasonable in the present case.

14. Keeping in view the abovesaid facts and circumstances, the present appeal bearing FAO No.3035 of 2016 is partly allowed and award dated 17.11.2015 is modified and respondent No.3 is directed to pay an additional amount of compensation to the tune of Rs.3,18,800/- to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

15. With respect to FAO No.5698 of 2016, learned counsel for the appellants has submitted that the monthly income of the deceased-Kanchan Gupta has been wrongly assessed as Rs.4000/- by the Motor Accident Claims Tribunal even though the minimum wages at the relevant time were Rs.6600/-. It is further submitted that with respect to the last rites, an amount of Rs.10,000/- has been awarded whereas the amount should have been Rs.18,000/-. It is also submitted that no amount has been awarded on account of loss of estate and thus, Rs.18,000/- is to be added on the said account also. With respect to loss of consortium, it is submitted that an amount of Rs.1,44,000/- (Rs.48,000/- x 3) is due whereas only an amount of Rs.25,000/- has been awarded by the Tribunal which is also inadequate. It is prayed that on the basis of the said facts, an additional amount of

Rs.5,49,600/- is to be awarded to the present appellants along with the interest at the rate of 7.5% per annum. In support of his contentions, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme Court in case titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported as ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***.

16. Learned counsel for the appellants has submitted a chart with respect to the case of Kanchan Gupta which is reproduced hereinbelow:-

Claim under Section 166 MV Act		
Date of Accident		28.12.2014
Deceased		Kanchan Gupta (50 years)
Claimants:-	Husband (54 years)	
	Son (25 years)	
	Daughter (28 years)	
Award	Rs.6.6 lacs + 9% interest	
Particulars	**Appeal**	**MACT**
Monthly income	Rs.6600/-	Rs.4000/-
Future Prospects	--	---
Deductions	--	--
Annual Income Assessed	Rs.79,200/-	Rs.48,000/-
Multiplier	13	13
Loss of dependency	Rs.10,29,600/-	Rs.6,24,000/-
Last Rites	Rs.18,000/-	Rs.10,000/-
Lost of estate	Rs.18,000/-	---

Consortium	Rs.48,000/- x 3= Rs.1,44,000/-	Rs.25,000/-
	Rs.12,09,600/-	Rs.6.59 lakh rounded off Rs.6.6 lakh
Difference		Rs.5,49,600/-

17. Learned counsel for the respondents has not been able to dispute the said charts as same have been prepared in accordance with law.

18. This Court has considered the said revised chart and finds that the same is in accordance with law and the monthly income, the amount with respect to loss of estate, the amount with respect to last rites and the amount with respect to loss of consortium, as have been mentioned in the said chart, are in accordance with law and thus, the appellants are entitled to an additional amount of Rs.5,49,600/-. With respect to the rate of interest, this Court is consistently awarding rate of interest at the rate of 7.5% per annum, which rate of interest is also reasonable in the present case.

19. Keeping in view the abovesaid facts and circumstances, the present appeal bearing No.FAO No.5698 of 2016 is partly allowed and the award dated 17.11.2015 is modified and respondent No.3 is directed to pay the additional amount of compensation to the tune of Rs.5,49,600/- to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

20. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

02.08.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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