IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(353)

FAO-6559-2015 (O&M)
Date of decision: 18.07.2024

Surinder Kaur and others

...Appellants

Versus

Jaspal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Ekta Thakur, Advocate, and
Ms. Samriti Aggarwal, Advocate, for the appellants.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

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VIKAS BAHL, J. (ORAL)

1. Present appeal has been filed by the wife and two sons of deceased Gurdev Singh for modifying the award passed by the Motor Accident Claims Tribunal, Chandigarh dated 18.02.2015, vide which the compensation of Rs.5,81,000/- along with interest, in the ratio of 60%, 20% and 20% respectively, was given in favour of the present appellants.

2. Learned counsel for the appellants has submitted that in the present case, an amount of Rs.59,000/- is required to be enhanced as the present appellants are entitled to a total compensation of Rs.6,40,000/- in view of 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***. It has been pointed out that although funeral expenses of Rs.25,000/- have been awarded by the Tribunal, but nothing has been given on account of loss of estate and thus, an amount of Rs.11,000/- more is required to be paid under the heads of loss of estate and funeral expenses. It is submitted that for the loss of consortium an amount of Rs.1,00,000/- has been awarded, whereas, the said amount as per the settled law is Rs.48,000/- to be given to each of the appellants/claimants and the total amount comes to Rs.1,44,000/- (Rs.48,000/- x 3). It is further submitted that it has been recorded in para 14 of the award that monthly income, after deducting a sum of Rs.3,500/- comes to be Rs.7,667/-, but the same has been wrongly rounded off to Rs.7,600/- to the disadvantage of the present appellants and on the said score, an amount of Rs.4,020/- more needs to be paid to the present appellants. In support of her case, learned counsel for the appellants has submitted a detailed chart showing comparison between the amount awarded by the Tribunal and the amount which ought to have been awarded and the same has been reproduced as under:-

Details	**Taken by Tribunal**	**Ought to be**
Occupation	Retired as Sub Inspector from CRPF	Retired as Sub Inspector from CRPF
Age	68 years	68 years
Actual Income	Rs.11,500/-	Rs.11,500/-
Future Prospects	-	-
Deduction	1/3 (Rs.11,550 – 3,833 = Rs.7,667) But rounded off to Rs.7,600/-	1/3 (Rs.11,500 – 3,833 = Rs.7,667/-)

Multiplier	5	5
Compensation	Rs.7,600 x 5 x 12 = Rs.4,56,000/-	Rs.7667 x 12 x 5 = Rs.4,60,020/-
Loss of Estate	-	Rs.18,000/-
Funeral Expenses	Rs.25,000/-	Rs.18,000/-
Loss of Consortium	Rs.1,00,000/-	Rs.48,000 x 3 = Rs.1,44,000/-
Total	Rs.5,81,000/-	Rs.6,40,000/-
Rate of Interest	7.5%	7.5.%

3. Learned counsel for respondent No.3-Insurance Company has not been able to dispute the said chart, but has submitted that the amount has been correctly rounded off and the amount of salary after deduction be taken as Rs.7,600/- and not Rs.7,667/-.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. 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.****"*

6. A perusal of the above would show that for the age of 68 years, multiplier of 5 is to be applied.

7. 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.*
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> *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.*
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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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> *59.5 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."

8. 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.

9. 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.*
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> ***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."***
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> ***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."***
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> *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."

10. 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.

11. It is not in dispute that the deceased had retired as a Sub Inspector from CRPF and at the time of death his age was 68 years of age and the actual income was Rs.11,500/- and after 1/3rd deduction, the said

amount comes to Rs.7,667/- and the multiplier of '5' is applicable in the present case. The Tribunal has not awarded any amount on account of loss of estate and has awarded Rs.25,000/- on account of funeral expenses, whereas, a total amount of Rs.36,000/- is to be awarded on the said two counts. There are three applicants/claimants and thus, loss of consortium to be awarded would be Rs.1,44,000/- (Rs.48,000 x 3), whereas, an amount of Rs.1,00,000/- has been awarded on the said count. Thus, the chart submitted by the appellants is in accordance with law. Even the argument of learned counsel for the appellant that the salary should not be rounded off to the disadvantage of the appellants, is also meritorious and even the salary after deduction is to be taken as Rs.7,667/-.

12. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 18.02.2015 is modified and respondent No.3 is directed to pay the additional amount of compensation of an amount of Rs.59,000/- to the present appellants along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of actual payment within a period of six weeks from today.

13. Pending miscellaneous application, if any, shall stands disposed of in view of the abovesaid order.

July 18, 2024 **(VIKAS BAHL)**
naresh.k **JUDGE**

Whether speaking/reasoned:- Yes
Whether reportable:- Yes