



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO No.364 of 2024 (O&M)
Date of Decision : 23.07.2024**

New India Assurance Company Ltd.Appellant
VERSUS
Gulshan and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satpal Dhamija, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-1210-CII-2024

1. This is an application for condonation of delay of 103 days in re-filing the present appeal.
2. For the reasons stated in the application, the same is allowed.
The delay of 103 days in re-filing the present appeal is condoned.

CM-1211-CII-2024

3. This is an application for condonation of delay of 45 days in filing the present appeal.
4. For the reasons stated in the application, the same is allowed.
The delay of 45 days in filing the present appeal is condoned.

FAO No.364 of 2024 (O&M)

5. Present appeal has been preferred by the Insurance Company challenging the award dated 13.04.2023 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the ‘Tribunal’) on four counts. Firstly, that there is a delay of three days in lodging the FIR. Learned

counsel for the appellant would contend that there was no justification for the delay in lodging the FIR as admittedly the complainant was present at the time of accident. The second argument raised by learned counsel for the appellant is that the deceased was employed with the insured and as such petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') would not be maintainable. The third argument of learned counsel for the appellant is that the name of the driver of the offending vehicle has not been mentioned in the FIR. It is further the contention that the unmarried sister of the deceased could not be taken as being dependent on the deceased. It is further the contention that the compensation under the head loss of consortium has been given to all the claimants individually.

6. Heard.

7. In the present case, admittedly, the accident did take place. The deceased, who was 28 years of age at the time of the accident, was working as a labourer with Chandigarh Tent Store, Bharatgarh. On 19.12.2021 the deceased alongwith Tarlochan Singh @ Kala, Soni and Gulfam went to Bharatgarh Bus-stand to load the articles of the tent store in Mahindra Pick Up bearing registration No.PB-12-N-8132 (hereinafter referred to as the 'offending vehicle'). At about 08.00 pm when they reached Bharatgarh and after parking the offending vehicle, the deceased alongwith Soni and Gulfam were standing behind the said offending vehicle. In the meantime, Tarlochan Singh @ Kala started the offending vehicle and in a rash and negligent manner without blowing the horn reversed the offending vehicle hitting the

deceased which resulted in grievous and fatal injuries. The argument of learned counsel for the appellant that there was a delay in lodging the FIR and hence the petition itself ought to have been dismissed, deserves to be rejected. There is no mandatory requirement of law that the FIR should be lodged before filing a petition under Section 166 of the Act. The claimants approaching the Tribunal have to prove the case before the Tribunal in accordance with law and irrespective of whether the FIR has been lodged or not. The second argument of learned counsel for the appellant that the deceased was employed with the insured and hence would not be covered under third party insurance, also deserves to be rejected. The said argument was not raised before the Tribunal. The third argument is regarding non mentioning of the name of the driver in the FIR. Merely because the name of the driver was not mentioned in the FIR by itself would not entail dismissal of the claim petition. Learned counsel for the appellant has not been able to show to this Court any law which mandates that the name of the driver should be mentioned in the FIR. The FIR had the complete details of the vehicle involved and hence mere non-mentioning of the name of the driver cannot be in any way be held against the claimants. The fourth argument of learned counsel for the appellant that the unmarried sister of the deceased could not be treated as a dependent on the deceased also deserves to be rejected. It is not a case where the sister is stated to be staying separately. The sister, though major, was admittedly staying with her brother and in the claim petition it has specifically been mentioned that the deceased was the sole breadwinner of the family. No evidence to the contrary has been

produced by the appellant. In view thereof, the argument of learned counsel for the appellant stands rejected. The argument of learned counsel for the appellant that all the claimants have been given separate amount under the head 'loss of consortium' is noticed only to be rejected. The Hon'ble Supreme Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** has held as under :

“8. The grounds of challenge by the Insurance Company are dealt with seriatim.

8.1 to 8.6 xx xx xx

8.7 A Constitution Bench of this Court in Pranay Sethi (supra) 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.

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.”

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.”

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.

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.

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.

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."

8. In view of the above, I do not find any merits in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

23.07.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO