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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2297-2018 (O&M)
Date of decision: 07.08.2024

Sonia and others

...Appellants

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arvind Kumar Yadav, Advocate for the appellants.

Mr. Amit Jaiswal, Advocate for respondent No.3.

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VIKAS BAHL, J. (ORAL)

1. The widow, minor daughter and father of the deceased-Ram Babu have filed the present appeal for modification of award dated 06.01.2018 and have prayed that the amount which has been awarded by the Motor Accident Claims Tribunal be enhanced.

2. The factum with respect to the death of Ram Babu in a road accident which had taken place on 27.08.2016 and the fact that respondent No.1 was the driver and respondent No.2 was the owner of the offending vehicle and respondent No.3 was the insurer of the offending vehicle, have not been disputed before this Court.

3. Learned counsel for the appellants has submitted that the amount of compensation which has been awarded by the Motor Accident

Claims Tribunal to the present appellants to the extent of Rs.23,41,336/- along with interest is inadequate and the same deserves to be suitably enhanced. It is submitted that the future prospects to the extent of 40% have not been awarded by the Motor Accident Claims Tribunal, which are required to be awarded in favour of the present appellants. It is further submitted that the loss of consortium has only been awarded to the extent of Rs.40,000/- whereas a total amount on the said aspect should be Rs.1,20,000/- (Rs.40,000/- x 3), on account of the fact that there are three claimants. It is submitted that an additional amount of Rs.9,88,344/- should be awarded to the present appellants. It is also submitted that the enhanced amount should be granted to the appellants along with the rate of interest at the rate of 9% per annum. In support of his arguments, he has relied upon the law laid down by the Hon'ble Supreme Court in cases 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 is pointed out that in the present case, appellant No.2, who was the minor daughter, has died and the said fact is apparent from the order dated 26.04.2023 passed by the Additional District Judge, Rewari, while releasing the FDR in favour of the present appellant No.1. It is further submitted that even appellant No.3 has died and thus, the enhanced amount should be released in favour of appellant No.1.

4. Learned counsel for respondent No.3-Insurance Company, on

the other hand, has submitted that the rate of interest which is being claimed by the present appellants is highly excessive and at best, they should only be granted interest @ 6% per annum.

5. With respect to 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.

6. Learned counsel for the appellants has given a revised chart, after taking into consideration the objection raised by the learned counsel for respondent No.3-Insurance Company and also after taking into consideration the view of this Court. The said revised chart is reproduced hereinbelow:-

"*Appellant herein: Claimants (widow, 1 minor daughter, father)*
Date of Accident: 27.08.2016
Nature of case: Death
Age of deceased/injured: 30 years

DETAILS OF RELIEF GRANTED/CLAIMED

DETAILS	*BEFORE THE TRIBUNAL*	*COMPENSATION CLAIMED AS PER JUDGMENTS OF SARLA VERMA, PRANAY SETHI & MAGMA GENERAL INSURANCE*
Income	*Monthly: Rs.16,700/- Annual: Rs.2,00,400/-*	*Monthly: Rs.16,700/- Annual: Rs.2,00,400/-*
Deduction	*1/3rd*	*1/3rd*
Future prospects	*Nil*	*40%*
Multiplier	*17*	*17*
Loss of estate	*Rs.15,000/-*	*Rs.15,000/-*
Funeral Expenses	*Rs.15,000/-*	*Rs.15,000/-*

Loss of consortium	*Parental:* *Filial:* *Spousal's* *Total Rs.40,000/-*	*Rs.40,000/- x 3 = Rs.1,20,000/-*
Total Compensation	*Rs.23,41,336/-*	*Rs.33,29,680/-*
Difference of amount	*Rs.33,29,680/- - Rs.23,41,336/-*	*Rs.9,88,344/-*
Alongwith Interest	*7.5%*	*7.5%*

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

8. 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."*

9. A perusal of the above would show that for the age of 30 years, multiplier of 17 is to be applied.

10. 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."

11. 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.

12. 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."

13. 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.

14. The revised chart which has been submitted by the present appellants is in accordance with the settled law, as an addition of 40% of the salary of the deceased is required to be added on account of future prospects and the total amount on account of loss of consortium that is to be paid to the three claimants has also been correctly stated in the revised chart. 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.

15. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 06.01.2018 is modified and respondent No.3 is directed to pay an additional amount of compensation to the tune of Rs.9,88,344/- to appellant No.1 along with the interest at the rate of 7.5% per annum from the date of filing the claim petition till its realisation within a period of six weeks from today.

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

07.08.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**