338

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4351-2018 (O&M)
Date of decision: 22.07.2024

Pooja and others

...Appellants

Versus

Sandeep and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Karan Singh, Advocate for the appellants.

Mr. Nigam K. Bhardwaj, Advocate
for respondent No.2-Insurance Company.

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VIKAS BAHL, J. (ORAL)

CM-14913-CII-2018

1. This is an application filed for condonation of delay of 272 days in refiling the present appeal.

2. For the reasons stated in the application which is duly supported by an affidavit, the same is allowed and delay of 272 days in refiling the present appeal is hereby condoned.

CM-14914-CII-2018

1. This is an application filed for condonation of delay of 72 days in filing the present appeal.

2. For the reasons stated in the application which is duly supported by an affidavit, the same is allowed and delay of 72 days in filing

the present appeal is hereby condoned.

Main case

1. The present first appeal has been filed against the award dated 22.09.2016 passed by the Motor Accident Claims Tribunal, Jhajjar, by the widow, three children and parents of the deceased Surender who had died in an accident that had taken place on 26.11.2014 with the offending vehicle of which the driver and owner was respondent No.1 and which was insured with respondent No.2.

2. The fact that respondent No.1 was the owner and driver of the offending vehicle and it was on account of his rash and negligent driving that the death of deceased took place and also the fact that respondent No.2 is the Insurance Company of the offending vehicle, are not in dispute. An appeal has been filed by the appellants seeking enhancement of the compensation which has been awarded to them to the tune of Rs.11,56,000/- in equal share from respondent No.2 along with interest @ 7% per annum from the date of institution of the petition till its realisation.

3. Learned counsel for the appellants has submitted that in the present case for the loss of love and affection, an amount of Rs.60,000/- has been awarded and for funeral expenses, an amount of Rs.25,000/- has been awarded and thus, a total amount of Rs.85,000/- has been awarded on the said two accounts whereas nothing has been awarded on account of loss of consortium to the spouse, parents and children of the deceased and thus, they are all entitled to a total consortium of Rs.2,88,000/- (Rs.48,000 x 6). It is further submitted that an amount of Rs.18,000/- for loss of estate and another amount of Rs.18,000/- for funeral expenses i.e. total amount of

Rs.36,000/- was to be awarded. It is further submitted that on the said three accounts, total amount of Rs.3,24,000/- was required to be awarded as per the settled law but the Motor Accident Claims Tribunal has awarded a total sum of Rs.85,000/- on the two headings of loss of love and affection and funeral expenses and thus, the award to the said extent deserves to be modified. The second argument raised by learned counsel for the appellants is that the income of the deceased has been wrongly assessed as Rs.7,000/- per month whereas the appellants had claimed that he was earning Rs.30,000/- per month and with respect to the same, the appellants had proved on record that he was a Typist, which fact was corroborated from certificate Ex.P2 in the Court and also had agricultural income with respect to which J-Forms Ex.P10 to Ex.P12 were also produced on record. It is submitted that the Motor Accident Claims Tribunal had taken a very conservative figure by observing that the deceased was earning nothing less than Rs.7000/- per month. It is submitted that the said amount deserves to be suitably enhanced and that the interest at the rate of 9% per annum is also required to be paid to the appellants on the enhanced amount.

4. Learned counsel for respondent No.2-Insurance Company, on the other hand, has submitted that the claim of the appellants to the effect that the income should be enhanced to Rs.30,000/- is highly excessive and has submitted that an amount of Rs.7000/- per month, as taken by Motor Accident Claims Tribunal, is adequate. It is further submitted that the rate of interest sought by the appellants at 9% per annum is highly excessive and the said rate of interest should be 6% per annum. Other aspects however could not be disputed.

5. Learned counsel for the appellants has prayed that the compensation which has been awarded to the present appellants is inadequate and has prayed that an additional compensation of an amount of Rs.13,10,000/- deserves to be awarded to the present appellants keeping in view 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***.

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

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 30 years, multiplier of 17 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.*
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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."

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.*
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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."*
>
> *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 present case, the Tribunal has not granted any amount on account of loss of consortium either to the spouse or to the parents or even to the children and as per the settled law, a total amount of Rs.2,88,000/-

(Rs.48,000/- x 6) is to be awarded to the six appellants. The Tribunal has awarded an amount of Rs.60,000/- for loss of love and affection and an amount of Rs.25,000/- towards funeral expenses, which amount has to be reduced, and the amount for loss of estate and amount for funeral expenses together are to be awarded as Rs.36,000/- (Rs.18,000/- each). It is relevant to note that the Motor Accident Claims Tribunal has not granted anything on account of future prospects and thus, it cannot be disputed that 40% increase in the income is also to be awarded on the said account in view of law laid down in ***Pranay Sethi's case*** (Supra). There is no dispute that the deceased was 30 years of age and thus, the multiplier of 17 has been correctly applied. The main issue in the present case is with respect to the income assessed inasmuch as the Tribunal has assessed the income as Rs.7000/- per month and while doing so has observed that the deceased cannot be held to be earning anything less than Rs.7000/- per month. The said finding of the Tribunal in the facts and circumstances of the present case, more so, in the light of the documents which have been produced is in the opinion of this Court highly conservative. It was the case of the appellants that the deceased was doing typing work of all kinds at District Court Compound, Jhajjar for the last 7 years and with respect to the same, the appellants had produced on record certificate Ex.P2 which was duly noticed in paras 11 and 12 of the judgment of the Motor Accident Claims Tribunal. Further it is the case of the appellants that the deceased was earning a substantial amount from agricultural land in Village Gijarodh and with respect to the same, had produced on record J-Forms Ex.P10 to P12 whereas on the other hand, there was no documentary or oral evidence on record to rebut the said evidence produced by the appellants.

14. Learned counsel for the appellants has correctly contended that in the said circumstances even at a conservative rate, it cannot be said that the deceased was earning less than Rs.10000/- per month. Accordingly, this Court is of the view that income of the deceased deserves to be enhanced to Rs.10,000/- per month. A revised chart has been prepared by the counsel for the appellants and the same is reproduced hereinbelow:-

Income assess = Rs.7000/- per month Deduction of 1/4th =Rs.1750/- Monthly income after deduction = Rs.7000/- (-) Rs.1750/- = Rs.5250/- Income after multiplier = Rs.5250/- x 17 x 12 = Rs.10,71,000/- Loss of love and affection = Rs.60,000/- Funeral expenses = Rs.25,000/- Total amount awarded by Tribunal = Rs.10,71,000/- + Rs.60,000/- + Rs.25,000/- = Rs.11,56,000/- with interest 7% per annum	Income has to be assessed = Rs.10,000/- per month 40% increase = Rs.10,000 x 40 = Rs.4000/- Income after 40% increase = Rs.10,000/- + Rs.4000/- = Rs.14,000/- Deduction of ¼ = Rs.14000/-/4=Rs.3500/- Monthly income after deduction = Rs.14,000/- -Rs.3500/- = Rs.10,500/- Multiplier of 17 = Rs.10,500/- x 12 x 17 = Rs.2,142,000/- Amount for loss of consortium of all appellant (i) Spouse consortium to appellant No.1 = Rs.48,000/- (ii) Parental consortium to appellant No.2 to 4 = Rs.1,44,000/- (iii) Filial consortium to appellant No.5 to 6 = Rs.96,000/- Total amount for loss of consortium = Rs.2,88,000/- Amount for loss of estate = Rs.18,000/- Amount of funeral expenses = Rs.18,000/- Total amount of compensation = Rs.2,466,000/- Rate of Interest = 9%

15. Only aspect which now needs to be determined is the rate of

interest to be awarded. The appellants have claimed 9% per annum as rate of interest whereas respondents have stated that rate of interest should be 6% per annum. This Court has been consistently awarding interest @ 7.5% per annum and is of the opinion that the said rate of interest is appropriate in the present case also. Accordingly, an interest @ 7.5% per annum is awarded on the enhanced/additional amount of Rs.13,10,000/- from the date of claim petition to the date of its realisation. Respondent No.2 is directed to pay the said amount within a period of six weeks from the date of receipt of certified copy of the present order.

16. In view of what has been observed above, the present appeal is partly allowed.

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

22.07.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**