**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

(297)

**FAO-7231-2018 (O&M)**
**Date of decision: 19.07.2024**

Janki Devi and another

...Appellants

Versus

Sharanjeet Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. J.S. Lalli, Advocate, with
Mr. Harmail Keshi, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for respondent No.3-Insurance Company.

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**VIKAS BAHL, J. (ORAL)**

**CM-26457-CII-2018**

1. This is an application filed under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 39 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 the delay of 39 days in filing the present appeal is condoned.

**FAO-7231-2018**

1. Present appeal has been filed by the father and mother of the deceased Rahul Kumar, who was 17 years of age at the time of his death, which had taken place on account of a motorcycle accident caused by

respondent No.1 on 27.02.2017, which vehicle was owned by respondent No.2 and was insured by respondent No.3.

2. In the present case, the factum that the deceased died on account of rash and negligent act of respondent No.1, as well as the fact that the vehicle was owned by respondent No.2 and was insured by respondent No.3, has not been disputed. The present appeal has been filed by the claimants for seeking enhancement of the amount awarded i.e. Rs.7,23,250/-/ by the Tribunal.

3. Learned counsel for the appellant has submitted that in the present case, the Motor Accident Claims Tribunal, Ludhiana, has wrongly assessed the income of the present appellant as Rs.5,000/-, inasmuch as, the present appellant would come within the definition of semi-skilled worker and the minimum wages at the relevant time for the semi-skilled were Rs.8,250/-. It is stated that the said income has been wrongly taken as Rs.5,000/- per month. It has been pointed out that although, the deceased was unmarried, his personal expenses had been taken as Rs.2,000/-, whereas, as per settled law, personal expenses to the extent of half of the income should have been taken. It is argued that the Tribunal has not granted anything to the claimants on account of future prospects and also on account of loss of consortium and even the amount awarded on account of cremation and loss of love & affection is also on the lower side. It is stated that an additional amount of Rs.7,06,400/- is to be paid to the claimants and interest @ 9% is also payable to the claimants on the said enhanced amount from the date of the filing of the claim petition till the date of the payment. In support of his arguments, learned counsel for the appellant 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. Learned counsel for respondent No.3-Insurance Company, who is the main contesting party, has not been able to dispute the above-said plea in view of the law laid down in the judgments referred to by counsel for the appellants, but has however stated that the interest @ 6% be awarded and not @ 9%.

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

6. 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."*

7. A perusal of the above would show that for the age of 17 years, multiplier of 18 is to be applied.

8. 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."*

9. 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.

10. 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."*

11. 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.

12. This Court in the case of "**Nasib Singh and another Vs. M/s Darshan Singh and others**", in FAO-1291-1991, decided on 15.07.2024, has granted the interest @ 7.5%, which rate of interest is also reasonable in the present case.

13. Learned counsel for the appellant in view of the above-said undisputed facts and circumstances, has prepared a revised chart, which is reproduced herein below: -

*"Janki Devi and another*
*Versus*
*Sharanjeet Singh and others*

| | |
|---|---|
| *Date of Accident:* | *27.02.2017* |
| *Name of Deceased: -* | *Rahul Kumar* |
| *Age of Deceased:* | *17 years* |
| *Number of Claimants: -* | *3* |

*a) Mother : Janki Dvi*
*b) Father: Lekshwar Ram*
*c) Unmarried sister Radha Kumari (claim qua her dismissed)*

***Tribunal awarded as under: -***

| | |
|---|---|
| *Income:* | *Rs.5,000/- PM, Rs.60,000/- yearly* |
| *Multiplier:* | *'18'* |
| *Personal Expenses:* | *Rs.2,000/-* |
| *Loss of Income after Multiplier:* | *Rs.6,48,000/-* |
| *Future Prospects:* | *NIL* |
| *Cremation:* | *Rs.15,000/-* |
| *Loss of Love & Affection:* | *Rs.10,000/-* |
| *Medical Expenses:* | *Rs.50,250/-* |
| *Interest from date of filing:* | *7.5%* |
| *Total:* | ***Rs.7,23,250/-*** |

***Entitlement : -***

| | |
|---|---|
| *Income: (Minimum Wages semi-skilled)* | *Rs.8,250/- PM, Rs.99,000 yearly* |
| *Multiplier:* | *'18'* |
| *Personal Expenses:* | *Rs.4,125/-, Rs.49,500/- yearly* |
| *Loss of Income after Multiplier:* | *Rs.8,91,000/ - (Rs.49,500 x 18)* |
| *Future Prospects:* | *40%* |
| *After future prospects:* | *Rs.12,47,400/-* |
| *Cremation:* | *Rs.18,000/-* |
| *Loss of Love & Affection:* | *Rs.18,000/-* |
| *Loss of Consortium :* | *Rs.48,000 x 2 = Rs.96,000/-* |
| *Medical Expenses :* | *Rs.50,250/-* |
| *Total :* | *Rs.14,29,650/-* |
| *Less :* | *Rs.7,23,250/-* |
| *Amount to be enhanced:* | ***Rs.7,06,400/-*** |
| *Interest from date of claim petition :* | *7.5%"* |

14. The revised chart produced by learned counsel for the appellant is in accordance with law, inasmuch as, income of the deceased was

assessed as Rs.5000/- per month, whereas, since he was a semi-skilled worker, thus, the minimum wages at the relevant time has been rightly taken in the chart as Rs.8,250/- which aspect has not been disputed and even the personal expenses with respect to the deceased, who was unmarried, had been wrongly taken as Rs.2,000/- by the Tribunal, whereas, the same should have been taken as Rs.4,125/-. No amount for future prospects as well as loss of consortium was given by the Tribunal and thus, the said entries in the revised chart have been correctly mentioned. The amount awarded for cremation and loss of love and affection was also on the lesser side and on each of the said two accounts, Rs.18,000/- is to be paid, as per the settled law.

15. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 17.04.2018 is modified and respondent No.3 is directed to pay an additional amount of compensation of an amount of Rs.7,06,400/- 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.

**July 19, 2024** **(VIKAS BAHL)**
*naresh.k* **JUDGE**

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