2024:PHHC:094297

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(343)

FAO-935-2022
Date of decision: 25.07.2024

Baskari and others

...Appellants

Versus

Mustak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Gupta, Advocate,
for the appellants.

Mr. Sachin Gupta, Advocate,
for respondent No.3.

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VIKAS BAHL, J. (ORAL)

1. Wife and four children of the deceased Mehboob have filed the present appeal praying for modification of the award dated 26.10.2021 passed by the Motor Accident Claims Tribunal, Gurugram, vide which the compensation of an amount of Rs.14,91,280/- has been awarded to the present appellants. The appellants are praying for making a suitable enhancement to the said compensation awarded.

2. It has been fairly submitted before this Court that the deceased-Mehboob died on 02.09.2019 in a road accident involving the vehicle which was being driven by respondent No.1 of which respondent No.2 is the

owner and respondent No.3 is the insurance company and the said facts are not being disputed.

3. Learned counsel for the appellants has submitted that in the present case, the Motor Accident Claims Tribunal, Gurugram has granted the funeral expenses for an amount of Rs.15,000/- and loss of estate for an amount of Rs.15,000/-, whereas, an amount of Rs.18,000/- each should have been granted on the said two counts. It is further submitted that on account of loss of consortium an amount of Rs.40,000/- has been awarded, whereas, as per the settled law, an amount of Rs.2,40,000/- (Rs.48,000 x 5) should have been awarded to the present appellants. It is stated that an additional amount of Rs.2,06,000/- is to be paid to the present appellants 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 is further prayed that 9% interest should be awarded to the present appellants on the additional amount. On behalf of the appellants, a chart has been submitted, the relevant portion of which has been reproduced herein below: -

"FAO No.935 of 2022

APPELLANT HEREIN:	CLAIMANT(S)/INJURED/INSURANCE COMPANY/ DRIVER/OWNER
DATE OF ACCIDENT:	02.09.2019
NATURE OF CASE:	DEATH/INJURY/DAMAGE TO VEHICLE
AGE OF DECEASED:	44 YEARS

DRIVING LICENCE/ROUTE PERMIT/ INSURANCE _______

DETAIL OF RELIEF GRANTED/CLAIMED

Detail	**Before the Tribunal**	**Compensation payable as per judgments**
Income	Monthly : Rs.9,024/- Annual : Rs.1,08,288/-	Monthly : Rs.9,024/- Annual : Rs.1,08,288/-
Deduction	1/4th (Rs.1,08,288 – Rs.27,072 = Rs.81,216)	1/4th (Rs.1,08,288 – Rs.27,072 = Rs.81,216)
Future Prospects	25% (Rs.81,216 + Rs.20,304 = Rs.1,01,520)	25% (Rs.81,216 + Rs.20,304 = Rs.1,01,520)
Multiplier	‘14’ (Rs.1,01,520 x 14 = Rs.14,21,280)	‘14’ (Rs.1,01,520 x 14 = Rs.14,21,280)
Loss of Estate	Rs.15,000/-	Rs.18,000/-
Funeral Expenses	Rs.15,000/-	Rs.18,000/-
Loss of Consortium	Rs.40,000/-	Rs.2,40,000/- (Rs.48,000 x 5)
Total	Rs.14,91,280/-	Rs.16,97,280/-
Rate of Interest	9%	7.5.%

4. Learned counsel for respondent No.3 on the other hand has submitted that the rate of interest which is to be awarded should be 6% per annum as 9% interest is highly excessive and is not the present rate of interest. Learned counsel for respondent No.3 has not been able to dispute the other aspects mentioned in the chart, in view of the law laid down in the above-said three judgments.

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 44 years, multiplier of 14 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. The chart submitted by the appellants is in accordance with law except on the part of the interest. It has been correctly mentioned in the chart that instead of an amount of Rs.15,000/- each on account of loss of estate and funeral expenses, the amount to be awarded is Rs.18,000/- each. Similarly, with respect to loss of consortium, the total amount to be paid to the appellants is Rs.2,40,000/- (Rs.48000 x 5), as there are five claimants and the amount awarded by the Tribunal is on the lower side. On the aspect of interest, it would be relevant to mention that this Court has repeatedly deemed fit to award interest @ 7.5% per annum and is of the opinion that even in the present case, the said rate of interest would be appropriate interest.

13. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the impugned award dated 26.10.2021 is modified and respondent No.3-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.2,06,000/- in equal proportions to all the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of actual payment within a period of six weeks from today.

July 25, 2024 **(VIKAS BAHL)**
naresh.k **JUDGE**

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