2025:PHHC:026221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

FAO-345-1986 (O&M)
Date of decision:- 24.02.2025

United India Insurance Company Limited
...Appellant

Versus

Salitan Devi and others
...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Manvi Verma, Advocate, for the appellant.

Mr. Prateek Mahajan, Advocate, and
Mr. Daanish Mahajan, Advocate,
for the respondents/claimants.

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VIKAS BAHL, J. (ORAL)

1. Present case is a fully burnt case, as has been recorded by the Co-ordinate Bench of this Court in the order dated 08.02.2024, however, with the assistance of the learned counsel for the appellant-insurance company and the respondents/claimants, the necessary documents including the award, grounds of appeal as well as the cross-objections filed by the respondents/claimants had been supplied and were taken on record. The authenticity of the said documents attached with the appeal and cross-objections has not been questioned before this Court.

2. The appeal has been filed by the Insurance Company i.e.,

United India Insurance Company Limited, challenging the award dated 24.12.1985 vide which compensation of Rs.92,400/- alongwith interest @ 12% per annum had been awarded in favour of claimants No.2, 3 and 4. The cross-objections have been filed on behalf of the claimants seeking enhancement of the compensation.

3. Learned counsel for the appellant-insurance company has submitted that in the present case, the award dated 24.12.1985 deserves to be set aside on the ground that the owner of the offending car has not been made a party. It is further submitted that in the absence of the owner, the award has been illegally passed and the same deserves to be set aside.

4. Learned counsel appearing for the respondents-claimants, on the other hand, has submitted that no such objection with respect to the owner of the offending car having not been made a party had been raised before the Tribunal nor any issue with respect to the same had been framed. It is further submitted that a perusal of the award would show that Gurjit Singh is shown to be the driver as well as owner of the offending car. It is stated that thus, it is not open to the appellant to raise the said plea at the present stage and at any rate, since in the present case the insurance company has been held to be liable, thus, it is the insurance company who has to pay the compensation to the claimants.

5. With respect to the cross-objections filed by the claimants, learned counsel for the respondents/claimants has submitted that in the present case, the deceased was working as a Naik in the Indian Army and was 32 years of age at the time of his death and the Tribunal had fell in error by not taking into consideration the future prospects and on the aspect of

future prospects, 50% of the salary/income was to be taken into consideration. It is further submitted that the Tribunal has not granted any amount on accounts of loss of estate and funeral expenses and thus, an amount of Rs.18,150/- on each of the said accounts are also required to be given to the claimants. It is argued that since there were four legal representatives of the deceased, which included his widow and three minor children, thus, an amount of Rs.1,93,600 (48,400 x 4) was also required to be granted to the claimants. It is further submitted that the claimants are claiming an amount of Rs.25,000/- as litigation expenses and has produced the following chart to state that the amount awarded should be enhanced.

"FAO No.345 of 1986
Appellants: United India Insurance Company
Cross Objectors: Claimant- Widow of the deceased
Deceased: Mr. M.R. Guleria
Age of the Deceased: 32 years
Dependents: Widow Smt. Salitan Devi and three minor children (Amita, Amina and Ashish Kumar).

DETAILS OF RELIEF GRANTED/CLAIMED:

DETAILS	***AWARDED BY THE TRIBUNAL***	***CLAIMED IN THE PRESENT CROSS OBJECTIONS***
Income	*Monthly : Rs.731*	*Monthly : Rs.731*
Deduction	*Approx ¼ (Rs.181)*	*¼ (Rs.183)*
Amount after deduction	*Rs.550*	*Rs.548*
Future Prospects	*Nil*	*50% (Rs.274)*
Multiplier	*14*	*16*
Loss of Estate	*Nil*	*Rs.18150*
Funeral Expenses	*Nil*	*Rs.18150*
Loss of Consortium	*Nil*	*Rs.1,93,600 (48,400 x 4)*
Litigation Expenses	*Rs.100*	*Rs.25000*
Total Compensation	*Rs.92,400 (Rs.550x12x14)*	*Rs.4,30,388 [1,75,824 (Rs.822x12x16) + Rs.18,150+ Rs.18150+Rs.1,93,600+Rs.25000]*
Difference		*Rs.3,20,324*

Interest	*12% (From the date of Award till payment)*	*12% (From the date of filing of Claim Petition to the date of Payment)*

Dated: 23.02.2025

Submitted By:

sd/-

Prateek Mahajan
Counsel for Respondents no.1 to 4"

6. Learned counsel for the claimants has submitted that the interest @ 12% per annum should be granted to the claimants from the date of filing of claim petition to the date of payment. It is further submitted that although the claimants are not able to lay their hands on all orders passed in the present case since the same is a burnt case, but one such order dated 08.12.1986, which the claimants have been able to lay their hands on, reads as under: -

"Present:-

The Hon'ble Mr. Justice D.S.Tewatia
The Hon'ble Mr. Justice M R Agnihotri

For the Appellant :- Mr. S.S.Aulakh, Advocate
For the Respondent:- Mr. B.R.Mahajan, Advocate

Heard. The order, dated 11th July, 1986, requiring the claimants to furnish security before withdrawing the compensation amount is modified to read:

"That the Tribunal shall deposit Rs.60,000/= out of the compensation amount in fixed deposit in the name of claimants through their mother (who is their natural guardian). The interest therefrom shall be paid to the claimants. The rest of the amount be paid to the claimants without furnishing any security. The fixed deposit amount, in question, shall become payable to the person to be named in the judgment of this Court."

(Misc No.5799/CII-86 is disposed of accordingly)

Sd/-D S Tewatia

Judge
Sd/- M R Agnihotri
Judge

December 8, 1986"

7. Learned counsel for the claimants has stated that as per his instructions, no amount has been paid to the claimants. In support of his arguments, learned counsel for the claimants 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***.

8. Learned counsel for the appellant, on the other hand, has submitted that the appellant had already deposited the amount as awarded by the Tribunal and the same was to be released to the claimants subject to security. It is further submitted that by virtue of the order dated 08.12.1986, an amount of Rs.60,000/- out of the compensation awarded, was to be put in fixed deposit in the name of the claimants through their mother and the interest was to be paid to the claimants. The rest of the amount was to be released to the claimants without furnishing any security. It is stated that the enhanced amount claimed is excessive and on accounts of loss of estate and funeral expenses at best an amount of Rs.18,000/- each on the said accounts can be given to the claimants. It is further stated that even on account of loss of consortium, the amount payable to the claimants would be Rs.1,92,000/- (48000 x 4) and as far as the litigation expenses are concerned, at best an

amount of Rs.10,000/- can be paid. It is submitted that even the rate of interest which is sought to be claimed by the claimants is highly excessive and the additional compensation should be paid by applying the interest at the rate of 6% per annum.

9. This Court has heard learned counsel for the parties and has gone through the paper-book as well as the Chart.

10. 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."*

11. A perusal of the above would show that for the age of 32 years, multiplier of '16' is to be applied.

12. 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."*

13. 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 is required to be enhanced at the rate of 10% in every three years.

14. 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 and 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."

15. 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.

16. As far as the present appeal filed by the insurance company is concerned, the same deserves to be dismissed being meritless. The sole ground raised by the learned counsel for the appellant to challenge the award is to the effect that the owner of the offending car has not been made a party. The said plea cannot be raised at this stage, as it could not be disputed before this Court that no such plea was raised before the Tribunal and no issue with respect to the fact that owner of the offending car had not been made a party, had been framed. Moreover, a perusal of the memo of parties of the award would show that Gurjit Singh was shown to be the driver and owner of the offending car. Thus, the sole argument raised on behalf of the appellant is meritless and deserves to be rejected and the appeal filed by the insurance

company deserves to be dismissed.

17. As far as the cross-objections filed by the claimants are concerned, this Court is of the opinion that the entries made in the chart submitted by the learned counsel for the claimants deserve to be accepted except the four entries i.e., accounts of loss of estate, funeral expenses, loss of consortium and litigation expenses. On the said aspects, this Court is in agreement with the learned counsel for the insurance company that at best on accounts of loss of estate and funeral expenses, an amount of Rs.18,000/- each can be granted and even under the heading of "consortium", an amount of Rs.1,92,000/- (48000 x 4) is required to be granted as the present case is an old case and the benefit of interest is also to be given to the claimants. The litigation expenses which has been claimed to the extent of Rs.25,000/- is highly excessive as the present appeal pertains to the year 1986 and thus, an amount of Rs.10,000/- on account of litigation expenses is adequate. Future prospects as well as the multiplier of '16' as sought to be applied by the claimants are in accordance with law and thus, the said aspects in the chart deserve to be upheld. The total compensation which the claimants are entitled to is an amount of Rs.3,95,824/- and thus, the additional compensation to which the claimants are entitled to is Rs.3,03,424/-. With respect to interest, it would be relevant to mention that this Court has repeatedly deemed it 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.

18. Keeping in view the abovesaid facts and circumstances, the appeal filed by the insurance company is dismissed and the cross-objections

filed by the claimants are partly allowed and the impugned award dated 24.12.1985 is modified and the appellant-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.3,03,424/- to the claimants 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.

19. From a perusal of the order dated 08.12.1986, which has been produced by the learned counsel for the claimants and has not been disputed by the learned counsel for the appellant, it is apparent that an amount of Rs.60,000/-, out of the total amount awarded, was ordered to be put in fixed deposit in the name of the claimants and since it is the case of the claimants that the said amount has not been paid, the same be released in favour of the claimants. In case the balance amount has also not been paid to the claimants, as stated by the claimants, then, it would be open to the claimants to move an application before the Executing Court and the Executing Court after verifying the facts, in case comes to the conclusion that the said amount has not been released to the claimants, then, the same would also be released to the claimants.

February 24, 2025 **(VIKAS BAHL)**
naresh.k **JUDGE**

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