IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

209 **FAO-4023-2006 (O&M)**
Date of Decision: January 17, 2025

Sushila and others **......Appellants**

Vs.

Bhagat Singh and others **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pankaj Attri, Advocate for
Mr. Hemant Bassi, Advocate
for the appellants.

Mr. Karandeep, Advocate for
Mr.Bijender Dhankar, Advocate
for respondent No.2

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

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 21.03.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Sonipat (for short, 'the Tribunal') for enhancement of compensation granted to the appellants/claimants to the tune of Rs.4,65,800/- on account of death of Om Parkash, in a Motor Vehicular Accident, occurred on 26.05.2005.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case is not reproduced and is skipped herein for the sake of brevity.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

3. The learned counsel for the claimants-appellants contends that the amount of compensation assessed by the learned Tribunal is on the lower side. He further contends that the Tribunal has erred in taking monthly income of the deceased-Om Parkash as Rs.3600/-. He further contends:-

ii) That the Ld. tribunal has erred in deducting 1/3rd of income for personal expenses.

iii) That no amount was granted for future prospects and loss of estate and amount granted for loss of consortium, funeral expenses is on lower side. Therefore, they pray that the present appeal be allowed and compensation be enhanced as per latest law.

4. *Per contra*, learned counsel for the respondents, however, vehemently argues on the lines of the award and contends that the amount of compensation as assessed by the learned Tribunal has rightly been granted. Therefore, they pray for dismissal of the appeal.

5. I have heard learned counsel for the parties and perused the whole record of this case.

6. The relevant portion of the award dated 21.03.2006 is reproduced as under:-

> *"ISSUES NO. 2&3*
> *18. Both these issues are inter-connected and are being taken up together for disposal.*
>
> *19. The claimants have claimed compensation to the tune of Rs.30 lacs on account of the death of Om Parkash in a motor vehicular accident. It is pleaded that the deceased was a contractor and used to earn Rs.25,000/- per month.*

20. In order to prove the income of the deceased Om Parkash, his wife Sushila appeared as PWl and it is deposed by her that her husband Om Parkash was a Laundry Contractor and working with M/s Glaxi Smith Kline Consumer Health Care Ltd. Khewra, Sonipat and with M/s Nestle India Ltd. Patti Kalayana Samalkha and was earning about Rs.25,000/- per month. It is further deposed by her that he used to spend his entire income for the welfare and maintenance of the petitioners. She has deposed that they were totally dependent upon the income of the deceased.

21. It is deposed by PW3 Ravinder Singh, Accountant that he is working as a practitioner accountant. It is further deposed by him that Om Parkash deceased was a contractor with GSK Khewra and M/s Nestle India Ltd. Patti Kalyana, Samalkha and he is maintaining his accounts. He has deposed that he was earning Rs. 2,27,619/-per year.

22. PW4 M.P.Dayanand Shetty, Dy. Manager, Glaxo Smit Kaline Consumer Healthcare Limited has deposed that as per record, Om Parkash deceased was laundry contractor with their company and the company was paying Rs. 35,000/-per month. He has stated that the company had deducted TDC of the Contractor every month from the payment of .35,000/-made to him.

23. PW5 Amit Mukherjee, Accountant Supervisor, Nestle India has deposed that as per record, Om Parkash deceased received an amount of Rs.2,49,442/-in the financial year April 2004 to March 2005. He has stated that the TDC certificate for the year 2004-05 is Ex. P17, the details of which is Ex. P18. This witness has further stated that Om

Parkash was contractor of their company for doing laundary works.

24. On the other hand, respondents have examined RW2 Rajinder Singh, Record Keeper, Punjab National Bank. It is deposed by him that he has brought the Saving Bank Account No.788 of Om Parkash. He has proved the statement of account Ex. R3 of Om Parkash.

25. The claimants have produced on record copies of deduction of tax at source Ex.P4 to Ex.P17. The respondents have placed on record copy of Saving Bank Account No.788 of Om Parkash. It shows that the balance was Rs. 5631/- in his saving bank account. The claimants have not produced any pass-book pertaining to the account possessed by deceased Om Parkash. Had there been sufficient income of the deceased, his saving bank account could have reflected the same.

26. Calculating the dependency of the petitioners upon the deceased and after assessing the evidence led by the petitioners, it is made out that the income of the deceased on the date of motor vehicular accident in question for the purpose of determining the dependency of the petitioners might have not exceeded a sum of Rs. 3600/- per month………"

7. A perusal of the record shows that the Ld. Tribunal erroneously placed undue reliance on the savings bank account balance of Rs.5,631/- to determine the deceased's income, this demonstrates a lack of judicial prudence. Further Ld. Tribunal fails to account for the socio-economic realities of Indian society in 2004. It is a well-established fact that during the relevant time,

banking habits, particularly in rural or semi-urban areas, were not prevalent, and many individuals operated primarily in cash. Consequently, the absence of substantial bank savings cannot serve as a sole determinant of the deceased's income.

8. The testimonies of PW1 (Sushila-wife of the deceased-Om Parkash), PW3 (Ravinder Singh, Accountant GSK Khewra and M/s Nestle India Ltd. Patti Kalyana, Samalkha), PW4 (M.P. Dayanand Shetty, Deputy Manager, Glaxo Smit Kaline Consumer Healthcare Limited), and PW5 (Amit Mukerjee, Accountant Supervisor, Nestle India) were consistent and supported by documentary evidence, including TDS certificates. These corroborative evidence conclusively demonstrated that the deceased's income was significantly higher than the amount assessed by the Tribunal.

9. The Ld. Tribunal's reliance on RW2's (Rajinder Singh, Record Keeper, Punjab National Bank) testimony, to the exclusion of all other evidence, demonstrates a failure to conduct a balanced assessment of the evidence.

10. This Court in ***FAO-2822-2006*** decided on 15.10.2024 titled as ***Tripta Rani and others Vs. Rajesh Kumar and another*** has already dealt with the similar issue and held as under:-

> *"10. Though no documentary evidence was submitted by the claimants, still it is pertinent to note that the deceased was working in an unorganised sector, therefore, the formal documentation of earning is not always maintained, in view of this, the Ld. Tribunal erred in assessing the income of the deceased as Rs.3000/- per month. Support for this conclusion can also be drawn from the judgment rendered by Hon'ble Apex Court in the case of* ***Chandra @ Chanda @ Chandraram Vs. Mukesh***

Kumar Yadav, 2021 ACJ 2554, *wherein it has been held as under:-*

> *"Merely because claimants were unable to produce documentary evidence to show monthly income of deceased, same does not justify adoption of lowest tier of minimum wage while computing income. No reason to discard oral evidence of wife of deceased who deposed that deceased was earning around Rs.15000/- per month Deceased aged about 32 years on date of accident and..."*

11. In view of the facts and legal principles outlined hereinabove, the income of Rs.3000/- as determined by the Ld. Tribunal appears to be understated. Consequently, upon due consideration of the oral evidence on recod, it would be just and proper to assess the income of the deceased as Rs.8000/- per month. This assessment in my view, would better serve the ends of justice."

11. The Tribunal's assessment of the deceased's income at Rs.3,600/- per month is grossly inadequate and contrary to the evidence on record and judicial principles. The oral testimonies, corroborated by documentary evidence, clearly establish that the deceased earned significantly more.

12. In light of the evidence and applicable legal principles, it would be just and reasonable to assess the deceased's income at Rs.10,000/- per month, ensuring that the compensation awarded adequately reflects the loss suffered by the dependents and upholds the principles of justice and equity.

13. Further perusal of the record shows that no amount was granted for future prospects and loss of estate. Moreover, the amount granted for

funeral expenses and loss of consortium is also on lower side. Therefore, the award requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

14. Hon'ble Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation and Another*** **[(2009) 6 Supreme Court Cases 121]**, laid down the law on assessment of compensation and the relevant paras of the same are as under:-

> "***30***. *Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
>
> ***31***. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*
>
> ***32***. *Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or*

brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

* * * * * *

***42.** 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[3], 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.*

15. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;
(B) Selection of multiplier depending on age of deceased;
(C) Age of deceased on basis for applying multiplier;
(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

"***52.** As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will* *be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.*

* * * * *

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 paras 30 to 32 of Sarla Verma[4] which we have reproduced hereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] read with para 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."*

16. Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others**

[2018(18) SCC 130] after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

> *"**21**. A Constitution Bench of this Court in Pranay Sethi[2] 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, cooperation, 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 recognised 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. 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[2]. 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.*

RELIEF

17. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed and the award dated 21.03.2006 is modified. The appellants-claimants are entitled to the enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.10,000/-
2	Future prospects @ 40%	Rs.4000/- (40% of 10,000)
3	Deduction towards personal expenditure 1/5th	Rs.2800/- (1/5th of 14,000)
4.	Annual Dependency	Rs. 1,34,400/- (11,200X12)
5	Multiplier (16)	Rs. 21,50,400/-
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- x 4 Spousal : Rs.48,000/- x 1 Filial : Rs.48,000/- x 2	Rs.3,36,000/-
9	**Total Compensation**	**Rs.25,22,400/-**
10	**Amount Awarded by the Tribunal**	Rs.4,65,800/-
11	**Enhanced amount**	**Rs.20,56,600/- (25,22,400-4,65,800)**

18. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nadu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

19. The respondent-Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from the receipt of copy of this judgment. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the account of the claimants/appellants as per the ratio settled in award dated 21.03.2006. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

20. Further, the Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Vinod Gupta, Advocate within a period of 20 days from the date of receipt of copy of this judgment.

21. Disposed of accordingly.

22. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 17, 2025
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes