



FAO-4583-2008

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-4583-2008

Date of decision : 11.02.2025

Janak Dulari and others

... Appellants

Versus

Jaspal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Rohit Singla, Advocate,
Mr.Naveen Kataria, Advocate and
Ms.Supriya Arora, Advocate
for the appellants.

Mr.Paul S. Saini, Advocate
for respondent no.3.

VIKAS BAHL, J.(ORAL)

1. Prayer in the present appeal is for modification of the award dated 13.08.2008 vide which the Motor Accident Claims Tribunal had awarded an amount of Rs.11,96,000/- as the compensation on account of death of Ashwani Kumar, which is stated to have taken place on 16.06.2007 on account of an accident caused by the offending vehicle being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3.

2. The present appeal has been filed by the widow and the children of the said deceased Ashwani Kumar. The fact that the deceased died in pursuance of the said accident which took place on 16.06.2007 of which respondent no.1 was the driver, respondent no.2 was the owner and

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was insured by respondent no.3 has not been disputed before this Court. The only question for determination before this Court is the compensation to which the present appellants are entitled to.

3. Learned counsel for the appellants has submitted that in the present case, the monthly income of the deceased has been wrongly calculated as Rs.21,000/- whereas it should be Rs.21,443/-. It is further submitted that benefit of future prospects to the extent of 30% has not been given to the appellants and even the multiplier which has been applied by the Tribunal i.e., 7 is not the appropriate multiplier, inasmuch as, since the age of deceased was 49 years, the multiplier of 13 should have been applied. It is submitted that the appellants are also entitled to an amount of Rs.18,150/- on account of loss of estate and also an amount of Rs.1,45,200/- on account of loss of consortium since there are three claimants. It is submitted that the additional amount be paid to the present appellants by giving 9% interest.

4. Learned counsel for the respondent no.3-insurance company, on the other hand, has pointed out that in the present case, income tax is required to be deducted from the income. It is further submitted that the interest claimed by the present appellants at the rate of 9% per annum is highly excessive and the interest at the rate of 6% is at best to be granted to the appellants on the enhanced income.

5. Learned counsel for the appellants has submitted a revised chart after taking into consideration the objections raised by learned counsel for respondent no.3. The relevant portion of the said chart is reproduced



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hereinbelow:-

“FAO NO. 4583 OF 2008

APPEAL HEREIN: CLAIMANTS

DATE OF ACCIDENT: 16.06.2007

NATURE OF CASE: DEATH

AGE OF DECEASED: 49 YEARS

DEPENDANTS: THREE (Wife, Daughter and Son)

DETAILS OF RELIEF GRANTED CLAIMED

<i>DETAILS</i>	<i>BEFORE THE TRIBUNAL</i>	<i>COMPENSATION CLAIMED</i>
<i>INCOME</i>	<i>Monthly: 21,000</i> <i>Annual: 2,52,000</i>	<i>Monthly: 21,443</i> <i>Annual: 2,57,316</i>
<i>LESS INCOME TAX</i>		<i>2,57,316 - 26,195</i> <i>= Rs. 2,31,121</i>
<i>DEDUCTION (1/3)</i>	<i>2,52,000-84,000</i> <i>= Rs. 1,68,000/-</i>	<i>2,31,121 - 77,040</i> <i>Rs.1,54,081</i>
<i>FUTURE PROSPECTS</i>	<i>NIL</i>	<i>1,54,081 +30%</i> <i>= Rs. 2,00,305</i>
<i>MULTIPLIER</i>	<i>1,68,000 X 7</i> <i>=Rs. 11,76,000</i>	<i>2,00,305 X 13</i> <i>= Rs. 26,03,965</i>
<i>LOSS OF ESTATE</i>	<i>NIL</i>	<i>Rs. 18,150</i>
<i>FUNERAL EXPENSES</i>	<i>Rs. 20,000</i>	<i>NIL</i>
<i>LOSS OF CONSORTIUM</i>	<i>NIL</i>	<i>48,400 X 3</i> <i>= Rs. 1,45,200</i>
<i>TOTAL COMPENSATION</i>	<i>Rs. 11,96,000</i>	<i>Rs. 27,67,315</i>
<i>CLAIMED COMPENSATION</i>		<i>Rs. 27,67,315-11,96,000</i> <i>=Rs. 15,71,315</i>
<i>INTEREST (@9%)</i>		<i>Rs. 24,98,390/-</i>
<i>TOTAL</i>		<i>Rs. 40,69,705/-”</i>



6. This Court has heard learned counsel for the parties and has perused the paper book and has also considered the said revised chart and the same has been found to be in accordance with law.

7. The Hon'ble 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.”

A perusal of the above would show that for the age of 49 years, multiplier of 13 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.”



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.

9. 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."

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.

10. This Court is of the opinion that the abovesaid revised chart which has been submitted on behalf of the appellants, after taking into consideration the objection raised by learned counsel for the respondent no.3 is in accordance with law. This Court is in agreement with the revised chart except with respect to the rate of interest i.e., 9% per annum which has been applied on behalf of the appellants. In the said revised chart, the amount of income tax, as argued by the learned counsel for the respondent no.3-insurance company, has been deducted and the amount with respect to future prospects, loss of estate and loss of consortium has been rightly added. Even the multiplier in the present case which is required to be applied is 13 instead of 7 since the deceased was 49 years of age. With respect to the rate of interest, this Court is of the opinion that interest

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granted at the rate of 8% by the Tribunal is reasonable in the present case even with respect to the additional compensation.

11 Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 13.08.2008 is modified and the present appellants-claimants are held entitled to additional amount of Rs.15,71,315/- along with interest at the rate of 8% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

(VIKAS BAHL)
JUDGE

February 11, 2025.*Davinder Kumar*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No