



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

214

FAO-1709-2007 (O&M)

Date of Decision: January 10, 2025

Raj Rani and others

.....Appellant(s)

Vs.

Sarjan Singh and another

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Balraj Singh, Advocate
for the appellants.

Mr. Vishwajit Bedi Advocate
for respondent No.2-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

Mr. Vishwajit Bedi, Advocate puts in appearance on behalf of respondent No.2-Insurance Company by filing Memorandum of Appearance in the Court today, and the same is taken record.

2. The present appeal has been preferred against the award dated 04.03.2006 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, Ambala (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the legal heirs of the deceased-Raj Kumar, was dismissed.

FACTS NOT IN DISPUTE

3. The brief facts of the case as mentioned in the claim petition are that on 4.11.2002, Raj Kumar (since deceased) alongwith Charanjit Singh had



gone to Shahabad for purchasing sweets for the forthcoming 'Diwali festival'. At around 7-7.30 p.m., Raj Kumar alone was coming from Shahabad on motorcycle bearing registration No. HR. 01-J-5823 and was going towards village Mohari. When Raj Kumar crossed village Khanpur, in the meanwhile respondent No.1 going from Khanpur side to Mohari side drove his motorcycle bearing registration No.HR-07-C-8665 rashly, negligently and in zig-zag manner hit the motorcycle of Raj Kumar. He received multiple and grievous injuries on his head, chest and other parts of the body. One Gurdev Singh son of Chamela Ram was following the respondent no.1 on his motorcycle and he had witnessed the accident. Raj Kumar was taken to Civil Hospital, Ambala Cantt. from where he was referred to Govt. Medical College and Hospital Sector-32, Chandigarh and from there, he was referred to PGI Chandigarh, where, he succumbed to the injuries on 8.11.2002. FIR No. 185 dated 8.11.2002, under Section 279, 304-A IPC was registered against the respondent No.1 at Police Station Barara.

4. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

5. From the pleadings of the parties, the Tribunal framed the following issues:-

- 1. Whether the accident took place due to the rash and negligent driving of motor-cycle bearing registration No. HR-07-C-8665? OPP.*
- 2. If issue number 1 is proved to what amount of compensation and from whom the claimants are entitled to? OPP.*
- 3. Whether the respondent No.1 was not holding a valid and effective driving license at the time of accident? OPR(2)*



4. Relief.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

7. The learned counsel for the claimants-appellants contend that the claim petition was dismissed only on the ground that there was no statement recorded by the Police under Section 161 Cr.P.C of PW-1, who is an eye-witness to the accident. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants as per latest law.

8. Per contra, learned counsel for the respondents vehemently argues on the lines of the Award and contends that the Award has rightly been passed. Therefore, he prays for dismissal of the present appeal.

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

10. The relevant portion of the award is reproduced as under:-

“ISSUE NO.1

10. For proving this issue the claimants have relied upon the statement of Gurdev Singh (PW1) besides copy of First Information Report Ex.P5.

11. The accident was caused on 4.11.2002. First Information Report in question bearing No. 185 under Section 279/304-A IPC was lodged on 8.11.2002 i.e. after four days of the accident by the brother Sat Pal of the deceased Raj Kumar. Sat Pal was not an eye witness. The First Information Report shows that it had been lodged against an unknown person driving some unknown vehicle.



12. Gurdev Singh (PW1) deposed that on the day of Diwali festival he was going from village Mohari for purchase of buffalo and when he was going via Samlehri, a motor cycle bearing no. HR-07C-8665 was going towards village Khanpur and it dashed into a motor cycle coming from the opposite side and the motor cyclist had fled away. This witness further deposed that he stopped the offending motor cyclist and asked him to provide first aid to the injured on which the offender came to the spot where the injured was lying. This witness continued to depose that thereafter he left for the house of his in-laws in village Samlehri. This witness further stated that he had told about this matter to some villagers present there and after one month he had gone to village Khanpur Kolia and had come to know that the injured had expired. This witness stated that thereafter he went alone in the police post and got recorded his statement. While concluding his deposition, this witness stated that the accident had occurred due to the rash and negligent driving of driver of motor cycle bearing registration No. HR-07C-8665. Some portion of cross-examination of this witness is relevant here and is reproduced here as under:-

"It was a day of Diwali of 2002----- I do not remember whether it was winter or summer. Voluntary it was about 7.30 p.m. I was present at the time of accident. 5-6 other persons were present at the time of this accident. I do not know the names, address of the persons who were present at the time of alleged accident -----I do not know the number of the motor cycle against which the offending vehicle had dashed into----- It is correct that I do not know English-----It is correct that I had not gone to the hospital. It is correct that I did not go to the police station. I did not know the deceased. I am not a summoned witness. I have been brought by the Instructions of the Advocate. Counsel had sent me a letter for giving evidence in this case. I have not given evidence in any other case of this nature in any court.----- I do not know Sarjan Singh driver of the motor cycle. I did not report the matter to the



police the same day of the accident because I thought that other villagers would get the case registered-----.

13. It is very strange that the witness knew the number HR-07C-8665 of the alleged offending motor cycle and did not see the motor cycle number of the deceased. When this witness did not know English it is very strange how could he record the number HR-07C-8665 and could remember this number for a long period of one month. It is absolutely unbelievable that this witness had seen the accident or after one month he himself went to the police station for informing the police about the manner of the accident. If this witness had really been concerned about the manner of the accident and reporting the matter to the police, he would have done so on the same day. His statement that 5/6 other persons were also present at the time of the accident, is also not believable because Sat Pal, brother of the deceased, in the First Information Report has mentioned that when Raj Kumar did not return, he alongwith other members of the family were told later on that his brother was lying in injured condition and that they went to bring the deceased in the morning. If 5/6 other persons had been present at the time of the accident, the deceased would not have remained lying at the spot till morning and some or other persons must have taken him to the hospital Immediately after the accident.

*14. The presence of this witness Gurdev Singh is further falsified from the report under Section 173 Cr.P.C. Ex.P2 on record. This witness Gurdev Singh is not cited as a witness in the criminal case. I also summoned the criminal case file No. 56-1/1.2.2003 titled as **State Vs. Sarjan Singh** in the court of Mrs. Ranjana Aggarwal, learned Judicial Magistrate Ist Class, Ambala Cantt. fixed for 12.12.2006. A perusal of that file shows that this witness Gurdev Singh is not a witness in that case and even there is no statement of this witness under Section 161 Cr.P.C. In that criminal case. If this witness had been the eye witness, then his statement must have been recorded under Section 161 Cr.P.C. by the police. Therefore,*



from all this evidence, it is absolutely falsified that this witness Gurdev Singh had witnessed the accident.

15. *It has come in the cross-examination of this witness that he was not a summoned witness and that he was brought on the Instructions of the counsel. When the counsel Shri P.C. Tayal, Advocate was asked as to why he had called this witness on his own, the learned counsel stated that the claimants were poor persons and for that reason he had sent the letter to this witness for deposing in this case. It appears that it is against the ethics of an advocate to call the witness personally. Either the witness should have been summoned through court or the witness should have been called by the party. The learned counsel has been advised not to repeat such things in future in order to avoid any unwarranted imputations on him.*

16. *The discussion above clearly goes to show that this witness Gurdev Singh was not an eye witness and had just been roped in lateron to state about insured vehicle bearing registration No.HR-07C-8665 so that the claimants could get compensation.*

17. *This fact is further verified from the admission of the accident by the respondent No.1. No person would admit the accident and if he was really concerned or had been truthful, the respondent No.1 would have informed the police the same day mentioned that the accident had been caused due to the fault of deceased himself. This shows the collusion of respondent No.1 as well.*

18. *For the reasons recorded above it cannot be said that the accident took place due to involvement of vehicle No.HR-07C-8655, what to talk of rash and negligent driving of respondent No.1 while driving the said vehicle and as such this issue is decided against the claimants.”*

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11. A perusal of the record shows that the Tribunal committed a grave error in rejecting the testimony of Gurdev Singh (PW1) on the premise that his statement under Section 161 Cr.P.C. was not recorded in the corresponding criminal case. It is a well-established legal principle of law that the absence of a statement under Section 161 Cr.P.C. does not, by itself, render a witness's testimony inadmissible or unreliable in civil proceedings, particularly in a motor accident claim petition. Moreover, the record unequivocally indicates that PW1's (Gurdev Singh) statement was, in fact, recorded under Section 161 Cr.P.C., a critical piece of evidence that the Tribunal failed to appreciate. A perusal of examination of PW1's deposition reveals that his testimony remained substantially unshaken during cross-examination. Despite putting suggestions by the respondents' counsel, PW1-Gurdev Singh consistently asserted that he was an eyewitness to the accident and unequivocally identified the offending vehicle, bearing registration No.HR-07-C-8665, as being involved due to the rash and negligent driving of its driver. The mere fact that PW1 was contacted by the claimant's counsel does not automatically impugn the credibility of his testimony, especially in the absence of any corroborative evidence to substantiate allegations of collusion or fabrication.

12. The Tribunal improperly placed undue reliance on PW1's (Gurdev Singh) inability to recall ancillary details, such as the names and addresses of other witnesses at the scene or his failure to report the incident on the same day. Such minor inconsistencies do not detract from the core substance of PW1's (Gurdev Singh) testimony, which clearly establishes the occurrence of the accident, the involvement of the offending vehicle, and the negligence of its driver. It is well-settled that minor lapses in memory or peripheral



inconsistencies do not render the testimony of an otherwise credible witness unreliable.

13. Motor Accident Claims Tribunals are guided by the principle of preponderance of probabilities rather than strict rules of evidence. The testimony of PW1-Gurdev Singh, corroborated by the circumstances of the case and the admission of the accident by respondent no.1, sufficiently establishes the involvement of the offending vehicle and the rash and negligent conduct of its driver.

14. The Tribunal further erred in disregarding the unambiguous admission of respondent No.1-Sarjan Singh regarding the occurrence of the accident. Such admissions carry significant probative value in motor vehicle accidents cases and reinforce the claimant's version of events. Additionally, the fact that the injured individual was found at the scene and later succumbed to his injuries unequivocally points to negligence on the part of the offending vehicle's driver. The Tribunal's failure to account for these critical aspects of the case undermines the validity of its conclusions.

15. The Tribunal's observations regarding alleged collusion between the claimant and PW1-Gurdev Singh are speculative and unsupported by evidence. No material has been placed on record to suggest that PW1's testimony was fabricated or that he was motivated by extraneous considerations. In the absence of such evidence, the Tribunal's findings on collusion are legally untenable and merit rejection.

16. In light of the foregoing analysis, the findings of the Tribunal dismissing the claim petition are legally unsound and liable to be set aside.



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17. With respect to determination of compensation, the record contains evidence of the claimant's earning and his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on the record.

18. A perusal of the record further shows that the deceased-Raj Kumar was stated to be a driver and his monthly income was asserted to be Rs.4500/- per month. However, no documentary evidence qua the same was placed on record, therefore, under the prevailing facts of the present case, his income is to be assessed as Rs. 2300/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Haryana.

SETTLED LAW ON COMPENSATION

19. 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 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 Thomas³, 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.

20. 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 Rajesh². 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 Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ 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.”

21. 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 Sethi² 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 Sethi². 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

22. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 04.03.2006 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2300/-
2	Future Prospects @ 40%	Rs.920/- (40% of 2300)
2	Deduction towards personal expenditure 1/4th	Rs.805/-(1/4th of 3220)
3.	Total Income	Rs.28,980/- (2415X12)
4	Multiplier	16
5	Annual Dependency	Rs.4,63,680/-
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- X 3 Spousal : Rs. 48,000/- X 1 Filial : Rs. 48,000/-	Rs.1,92,000/-
	Total Compensation	Rs.6,91,680/-



23. 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 compensation amount from the date of filing of claim petition till the date of its realization.

24. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

25. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Vishwajit Bedi, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

26. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

January 10, 2025

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Whether speaking/non-speaking : Speaking
Whether reportable : Yes / No