



FAO-2391-2007 (O&M)

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

FAO-2391-2007 (O&M)

Date of Decision: 21.01.2025

Smt. Antar Devi and others

.....Appellants

Vs.

Deen Dayal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. J.P.Sharma, Advocate,
for the appellants.Mr. Aseem Aggarwal, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 21.12.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal') for enhancement of compensation, granted to the appellants/claimants to the tune of Rs.8,65,410/- along with interest at the rate of 7% per annum, on account of death of Shiv Raj Singh in a Motor Vehicular Accident, occurred on 09.12.2004.

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 appellants/claimants contends that the compensation assessed by the learned Tribunal is on the lower side and deserves to be enhanced. He further contends that deceased-Shiv Raj Singh was 45 years old and was working as a P.T.I in Government School, Kulwari and was getting a salary of Rs.8,865/- per month. He further contends that deceased-Shiv Raj Singh was an Ex. Serviceman and was also getting monthly pension of Rs.2,863/-. However, the learned Tribunal has erred in not taking into consideration the monthly pension of the deceased while calculating the total income of the deceased. He further contends that the learned Tribunal has wrongly deducted 1/3rd instead of 1/4th towards personal expenses and also erred in applying the multiplier of 12 instead of 13. He further contends that the learned Tribunal has also erred in awarding meager amount towards funeral expenses. Moreover, no amount has been granted towards loss of consortium and loss of estate. Therefore, he prays that the present appeal be allowed and compensation be enhanced, as per latest law.

4. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues that the award has rightly been passed by the learned Tribunal and the amount of compensation as assessed by it has rightly been granted to the appellants/claimants. Therefore, he prays for dismissal of the present appeal.



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

6. A perusal of the award shows that deceased-Shiv Raj Singh was 47 years old, as per matriculation certificate (Ex.R1/A), at the time of accident. A perusal of the award further shows that the learned Tribunal has erred in assessing the monthly income of the deceased as only Rs.8,865/-, which is depicted from his last pay certificate (Ex.PW1/A) and not taking into consideration the monthly pension received by him, which is Rs.2,863/- per month as Ex. Serviceman, as per ledger record (Ex.PW4/A). Hon'ble the Supreme Court has laid down the law regarding computation of pension while assessing the income of the deceased in the case of **Lal Dei & Ors. Vs. Himachal Road Transport, 2007(8) SCC 319**. The relevant portion of the same is reproduced as under:-

*4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accident Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accident Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In the case of **Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corpn. and another reported in 1998(4) RCR (Civil) 177 : AIR 1998 page 3191** this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this the appeal is allowed. The order of*



deduction of the family pension is set aside. Accordingly, the appellants would be entitled for an amount of Rs. 10,27,000/- as compensation with interest at the rate of 9% from the date of the filing of the petition.

7. Hon'ble the Supreme Court in the case of **United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan, 2002(6) SCC 281** has also clarified the law relating to the inclusion of Pension, P.F., LIC, Social Security amount etc., the benefits which would have otherwise been available to the claimants not arising out of accident only and which cannot be deducted while determining compensation under Section 166 of the Act.

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

“31. XXX XXX XXX XXX XXX
It may be useful to quote paragraph 33 of the decision which reads as under :-

“Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the “pecuniary advantage”, liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.”

The Court has observed in the last part of the para 34 :-

“How can an amount of loss and gains of all one contract be made applicable to the loss and gain of an other contract.”



*Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The court has further referred to receipts of Provident Fund which is a deferred payment out of contribution made by an employee during tenure of his service. Such an amount is payable respective of accidental death of the employee. **The same is the position relating to family pension. There is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive.** This Court for taking the above view has also referred to certain English decisions as discussed in paragraph 18 of the judgment.*

*We are in full agreement with the observations made in the case of Helen Rebello (supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far as to be deductible from the amount of compensation. **There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation.** Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to pre-mature death of the insured. So far other items in respect of which learned Counsel for the Insurance Company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituent of funds is tax which is deducted from income for*



the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse off, if he had never taken an Insurance Policy, or had not made investments for future returns.

We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of Insurance Policy and social security benefits received by the claimants."

Therefore, in view of the above, the pension received by the deceased shall also be taken into consideration while computing the monthly income of the deceased, which comes to Rs.11,728/- (Rs.8,865 + Rs.2,863) and after deducting the tax payable, which is Rs.17,147/- for the year of 2004-2005, net annual income of the deceased comes out to be Rs.1,23,589/-. Therefore, the monthly income of the deceased is assessed as Rs.10,299/- for the purpose of grant of compensation.

8. A perusal of the award further shows that the learned Tribunal has wrongly deducted 1/3rd instead of 1/4th towards personal expenses and has also wrongly applied the multiplier of 12 instead of 13. Moreover, the amount awarded towards funeral expenses is on the lower side and no amount has been awarded towards future prospects, loss of estate and loss of consortium. Therefore, the award requires indulgence of this Court.



SETTLED LAW ON COMPENSATION

9. 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.

10. 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.”

11. Hon'ble the 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.



CONCLUSION

12. In view of the law laid down by Hon'ble the Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 21.12.2006 is modified accordingly. The appellants/claimants are entitled to enhanced compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.10,299/-
2	Future prospects @ 30%	Rs.3,090/- (30% of 10,299)
3	Deduction towards personal expenditure 1/4th	Rs.3,347/- $\{(10,299 + 3,090) \times 1/4\}$
4	Total Income	Rs.10,042/- (13,389 – 3,347)
5	Multiplier	13
6	Annual Dependency	Rs.15,66,552/- (10,042 X 12 X 13)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
9	Loss of Consortium Spousal : Rs. 48,000 x 1 Parental : Rs.48,000 x 4	Rs.2,40,000/-
	Total Compensation	Rs.18,42,552/-
	Amount Awarded by the Tribunal	Rs.8,65,410/-
	Enhanced amount	Rs.9,77,142/-

13. 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.

14. The respondent No.3-Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of the appellants/claimants, in the ratio settled by the learned Tribunal in its award dated 21.12.2006. The appellants/claimants are directed to furnish their bank accounts details to the learned Tribunal.

15. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Aseem Aggarwal, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

16. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

21.01.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No