

(2018) 10 P&H CK 0294

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No.3077 Of 2011 (O&M)

Santro And Anr

APPELLANT

Vs

Ramesh And Anr

RESPONDENT

Date of Decision: Oct. 15, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Avneesh Jhingan, J

Bench: Single Bench

Advocate: Amit Mann, Jasbir Mor, Nagar Singh, A. S. Virk, Sandeep Suri

Final Decision: partly Allowed

Judgement

,

Avneesh Jhingan, J.",

1. The unfortunate parents, who lost their young son Rakesh, aged 22 years, in a motor vehicular accident are in appeal for enhancement of",

compensation awarded by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') passed in a petition filed under Section 166",

of the Motor Vehicles Act, 1988 (for brevity, 'the Act') vide award dated 13.08.2010.",

2. The brief facts emanating from the record are that on 06.12.2009 Rakesh along with Subhash and Satish was participating in a marriage procession.,

When they were proceeding towards Bhiwani Road and reached near the Bhiwani Road barrier, a rashly and negligently driven trailer bearing",

registration No.HR-63A-8104 (for brevity, 'the offending vehicle') came from wrong side and stuck Rakesh and Satish. The driver of the offending",

vehicle fled away from the spot leaving his vehicle there. They were taken to General Hospital, Jind, where Rakesh was declared brought dead. FIR",

No.826 dated 07.12.2009 was registered at Police Station, City Jind.",

3. The parents of Rakesh filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'). It was claimed that",

deceased was 22 years of age and was an agriculturist. It was pleaded that he was having his own land and besides that he had taken some land on,

lease and was earning Rs.10,000/- per month.",

4. The Tribunal, after considering the facts and appreciating the evidence produced, held that the accident occurred due to rash and negligent driving",

of the offending vehicle. The age of the deceased was taken as 22 years. His monthly income was assessed as Rs.3600/-. The Tribunal awarded,

compensation by calculating the same by applying different deductions for self expenses for different time period, i.e. different rate of deduction for",

first five years and different rate for remaining period of 11 years. The Tribunal awarded a sum of Rs.3,12,400- along with interest @ 9% per annum.",

The amount awarded included Rs.10,000/- for transportation, funeral and last rites etc.",

5. Learned counsel for the appellant argued that the deceased was an agriculturist and the Tribunal erred in assessing the monthly income of,

Rs.3600/-. The Tribunal has wrongly applied the multiplier of 16 as the deceased was 22 years of age at the time of the accident. The calculation,

made by the Tribunal by taking a different rate of deduction for initial five years and different for remaining 11 years has also been challenged.,

Further, the amount awarded of Rs.10,000/- for funeral expenses is stated to be on the lower side. It was also contended that while awarding the",

compensation, future prospects have not been awarded.",

6. Learned counsel for the Insurance Company defended the award and vehemently resisted any further enhancement. He argued that the Tribunal,

has correctly awarded the compensation.,

7. I have heard learned counsel for the parties and perused the record.,

8. In the claim petition, it was pleaded that the deceased was an agriculturist and was owned the land. From the perusal of the record, it is evident that",

no evidence was adduced by the claimants to prove ownership of the agricultural land. The Tribunal has specifically recorded that the monthly income, claimed by the claimants have not been substantiated. It would be pertinent to mention here that there was no evidence adduced apart from the, statement made by the complainant that the deceased was an agriculturalist. In such circumstances, the safest yardstick would be to rely upon the", minimum wages prevalent in the State at the time of accident. The minimum wages for unskilled labourer prevalent in the state of Haryana during, December, 2009 was Rs.3914/-. For calculation purposes the monthly income of the deceased is rounded of to Rs.4,000/-.",

9. In consonance with the decision of the Supreme Court in National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 515, 740%",

future prospects are to be awarded for self employed persons below 40 years of age.,

10. There is no dispute with regard to the age of deceased. As per the decision of Supreme Court in Sarla Verma and others Vs. Delhi Transport,

Corporation and another, (2009) 6 SCC 121, multiplier of 18 has to be applied. The deceased was unmarried, 1/2 deduction for self expenses is made.",

11. There is no justification for awarding the compensation by making two different deductions for initial five years and for the remaining,

11 years as has been done by the Tribunal. The compensation is calculated as per the guidelines of the Supreme Court in case of Sarla Verma's case,

(supra) and Pranay Sethi's case (supra).,

12. An amount of Rs.15,000/- each has to be awarded for loss of estate and funeral expenses.",

13. The latest decision of Supreme Court in Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333,",

considering the decision of Constitution Bench in Pranay Sethi's case (supra) held that loss of consortium is a compendious term which encompasses,

'spousal consortium', 'parental consortium', and 'filial consortium' and thereafter awarded a sum of Rs.40,000/- each to the father and sister of",

deceased. The relevant portion of the Supreme Court decision (supra) is reproduced below:-,

8.7 Constitution Bench of this Court in *Pranay Sethi (supra)* 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.",

Rajesh and Ors. v. Rajbir Singh and Ors. (2013) 9 SCC 54.,

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.",

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.",

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.,

Monthly income, Rs.4000/-

40% future prospects, Rs.1600/-

Total income, Rs.5600/-

1/2 deduction for self expenses, Rs.2800/-

Annual Dependency (2800x12), Rs.33,600/-

Applying multiplier of 18

(33,600x18), Rs.6,04,800/-

Funeral expenses, Rs.15,000/-

Loss of estate, Rs.15,000/-

Loss of consortium to parents, Rs.40,000/-

Total,"Rs.6,74,800/-