

2024.PHHC.114038



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

(218)

FAO-3382-2015 (O&M)

Date of decision: 31.08.2024

Kisturi Devi and others

...Appellants

Versus

Hem Raj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Akshay Bhan, Senior Advocate, with
Mr. Rohit Nagpal, Advocate
for the appellants.

Mr. J.P. Sharma, Advocate
for respondents No.1 and 2.

Mr. Chandandeep Singh, Advocate
for respondent No.3-Insurance Company. (Through VC)

VIKAS BAHL, J. (ORAL)

1. The widow, two minor children and mother of the deceased Shimbu Dayal have filed the present appeal seeking modification of the award dated 17.12.2014 passed by the Motor Accident Claims Tribunal, Narnaul and have prayed for enhancement of the amount awarded by the Tribunal.

2. On behalf of the appellants, it has been submitted that the Tribunal had awarded a total amount of Rs.10,86,000/- along with interest @ 9% per annum. It is further submitted that an amount on account of future

prospects to the extent of 40% had not been granted and even the multiplier which had been applied by the Tribunal was '13', whereas, the multiplier of '15' should have been applied as the deceased was 38 years of age. It is stated that no amount had been given on account of loss of estate and also for the loss of consortium and on the said counts also, an amount of Rs.15,000/- and Rs.80,000/- (Rs.40000 x 2) respectively should have been awarded. It is further stated that monthly income which had been assessed of the deceased had been taken to be Rs.8,000/-, whereas, a perusal of the income tax returns, which have been duly placed on record as Ex.P5, Ex.P6 and Ex.P7, would show that monthly income of the deceased was far more than Rs.8,000/- and it is submitted that the income of the deceased should be assessed at minimum Rs.14,681/- per month. It is submitted that in order to substantiate the fact that the deceased was running two trading firms, the present applicant-appellants in pursuance of the order dated 22.10.2019 passed by a Co-ordinate Bench of this Court had filed an application under Order 41 Rule 27 of CPC for bringing on record relevant documents to show that the deceased was running the said two firms. It is stated that an additional amount of Rs.18,98,709/- is to be paid to the claimants and interest @ 9% is also payable to the claimants on the said enhanced amount from the date of the filing of the claim petition till the date of the payment. On behalf of the appellants, a detailed chart showing the comparison between the amount awarded by the Tribunal and the amount which ought to have been awarded has been submitted and the relevant portion of the same has been reproduced as under:-

Details	Before by Tribunal	Compensation claimed as per judgments of Sarla Verma, Pranay Sethi and Magma General Insurance
Income	Tribunal assessed Monthly : Rs.8000/- Annually: Rs.96,000/-	Monthly : Rs.14,681/- Annual : Rs.1,76,172/- (as per Ex.P6, Annexure A-10)
Deduction	1/4th Rs.24,000/- P.A.	1/4th = Rs.44,043/- P.A.
Future prospects	None	Rs.1,32,129/- + 40% = Rs.1,84,980.6/-
Multiplier	‘13’, Rs.9,36,000/-	‘15’, Rs.27,74,709/-
Loss of Estate	None	Rs.15,000/-
Funeral Expenses	Rs.20,000/-	Rs.15,000/-
Loss of Consortium	Parental : None Family : None Spousal’s : None	Rs.40,0000/- Rs.40,000/-
Total Compensation	Rs.96,000 - ¼th = Rs.72,000 x 13 = Rs.9,36,000 + Rs.20,000 = Rs.9,56,000/-	Rs.1,76,172 - ¼th + 40% = Rs.1,84,980.6 x 15 = Rs.27,74,709 + Rs.1,10,000 = Rs.28,84,709/-
Interest	9% P.A.	
Loss of love and affection	Rs.30,000/- + Rs.1,00,000/-	Rs.1,00,000/-
Total	Rs.10,86,000/-	Rs.29,84,709 + 9% interest
Rate of Interest	7.5%	7.5.%

3. Learned counsel for respondents No.1 and 2 (driver and owner) as well as for respondent No.3-Insurance Company, on the other hand, have submitted that the funeral expenses had been paid on the higher side and the same have been correctly reduced by the appellants in the chart. It is further submitted that even the amount on account of loss of love and affection is also on the higher side and a total amount of Rs.1,30,000/- had been awarded, whereas, an amount of Rs.1,00,000/- should have been awarded and the said fact has been correctly mentioned in the above-said chart. It is stated that the monthly income of the deceased, which is being claimed by the present appellants, is highly exaggerated and the finding of the Tribunal

to the effect that the monthly income is Rs.8,000/- is correct and deserves to be upheld. It is further stated that even the interest which is being claimed by the present appellants is excessive and at best interest @ 7.5% can be granted on the enhanced amount and not @ 9%.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. Hon'ble the 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.”*

6. A perusal of the above would show that for the age of 38 years, multiplier of '15' is to be applied.

7. 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.”

8. 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."

10. 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.

11. A perusal of the chart which has been given on behalf of the appellants and has been reproduced herein-above, would show that the benefit of future prospects of 40% on the income of the deceased is required to be given in view of the law laid down in the above-said judgments. The multiplier of '13' has been wrongly applied by the Tribunal as the deceased was 38 years of age and thus, the multiplier of '15' is required to be applied. Amount of Rs.15,000/- on account of loss of estate has also been correctly mentioned in the above-said chart. Non-grant of loss of consortium is also in violation of the above-said judgments and thus, an amount of Rs.80,000/- (Rs.40000 x 2) as claimed by the present appellants is in accordance with law. In the chart, the amount awarded to the claimants on account of loss

and affection and on account of funeral expenses has been rightly decreased and has been correctly stated. With respect to interest, it would be relevant to mention that this Court has repeatedly granted interest @ 7.5% p.a., which rate of interest is also reasonable in the present case.

12. The issue which is required to be adjudicated is qua the income of the deceased. The Tribunal has in para 23 of the impugned judgment assessed the income of the deceased as being Rs.8,000/- and the same has been done in spite of the fact that the income tax returns of the deceased even prior to his death had been duly exhibited on record and even evidence in respect of the said returns had been duly tendered. Ex.P5 (at page 117 of the record of the Tribunal) would show that the same is the income tax return for the assessment year 2011-12 (financial year 2010-11) and was filed on 29.05.2012, prior to the date of the incident, which is 28.07.2013 and the same showed the total income of the deceased to be Rs.1,57,700/- and thus, the monthly income comes to be Rs.13,141/-. Ex.P6 is the income tax return of the deceased for the assessment year 2012-13 (financial year 2011-12) and the said income tax return has also been filed on 21.01.2013, which is prior to the date of the accident, which took place on 28.07.2013 and the same showed the total income of the deceased to be Rs.1,76,180/- and thus, the monthly income as per the said return would come to be Rs.14,681/- and the said return was the last return which was filed by the deceased prior to his death on 29.07.2013. Although, the return filed by the deceased for the financial year 2012-13 (assessment year 2013-14) which has been exhibited as Ex.P7 shows the total income in the said return to be Rs.2,59,360/-, but since the same has been filed on 22.11.2013, which is

after the date of death of the deceased i.e. 29.07.2013, the same is not required to be taken into consideration. Ex.P6 is the most relevant document to be considered to assess the income of the deceased. A perusal of the said return further shows that Shimbu Dayal has been shown as the proprietor of M/s Shri Balaji Minerals and in addition to the said documentary evidence, the claimants have also given oral evidence in respect of the fact that the deceased was earning well by doing trading business. Kisturi Devi, widow of the deceased, has appeared as PW-2, and in her examination-in-chief, she has specifically stated that the deceased was a trader and was running two trading firms i.e. Shri Balaji Minerals, Narnaul and M/s Kisturi Minerals, Narnaul and was earning Rs.20,000/- per month and his business was increasing and in the near future his income would have further increased. Even in the cross-examination, the said Kisturi Devi has got recorded the fact that her husband was earning Rs.20,000/- per month and has denied the suggestion that he was not doing the work of trade. The said evidence produced on record has not been considered in accordance with law by the Tribunal. The amount shown in the income tax return, more so, which was prior to the date of the incident, should have been taken into consideration when there was nothing on record to show that the income tax returns which had been produced on record were forged, fabricated or manipulated documents.

13. In addition to the above, it would be relevant to note that a Co-ordinate Bench of this Court vide order dated 22.10.2019 had passed the following order: -

“Learned counsel for the appellants in support of his assertion

that deceased was running two firms, is directed to produce documentary proof in the shape of registration certificates of firms, his status as proprietor or partner in both the firms, in case, he was partner, then partnership deed, bills of sale and purchase of goods, sales tax or GST paid or received by him from his clients and the account statements as annexed with his income tax returns to show that entire income earned by the deceased was from his business.

Adjourned to 25.11.2019 for consideration.

October 22, 2019”

14. In pursuance of the said order, learned counsel for the appellants had filed an application under Order 41 Rule 27 of CPC for bringing on record the documents Annexures A-1 to A-10 as additional evidence. No reply to the said application had been filed and on 24.02.2023, the same was ordered to be heard along with the main case. The documents annexed in the said application also supported the fact that the deceased was running two trading firms i.e. M/s Shri Balaji Minerals and Ms/ Kasturi Minerals & Chemicals. Documents (Annexures A-1 to A-5) pertained to M/s Shri Balaji Minerals. Document (Annexure A-1) is a Form-B, Certificate of Registration and the same shows that M/s Shri Balaji Minerals has been registered under Sections 7(1)/7(2) of the Central Sales Tax Act, 1956 and the said certificate is dated 25.01.2012, which is prior to the date of the incident. Document (Annexure A-2) which is a registration certificate issued under Section 11 of the Haryana Value Added Tax Act, 2003 shows that the deceased/Simbhu Dayal Saini was the proprietor of Shri Balaji Minerals and was dealing in the business of resale of all kind of minerals, powder, granite, tiles and building material and the said document is also dated 25.01.2012, which is prior to the date of incident. Document (Annexure A-3 Colly.),

which are discrepancy notes and have been issued by Star Wire (India) Ltd. - Ballabgarh, shows that various bills submitted by Ms/ Balaji Minerals have been cleared by the said Star Wire (India) Ltd. - Ballabgarh and the bills as well as the amount paid are also prior to the date of the incident. Other documents have also been annexed to support that the deceased was running M/s Shri Balaji Minerals. Documents (Annexures A-6 to A-8) pertain to M/s Kasturi Minerals & Chemicals. Annexure A-7 is an invoice/order dated 07.07.2010 i.e. much prior to the date of the incident, which took place on 28.07.2013 and the same showed that one B.N. Enterprises has stated that they have received an order from M/s Kasturi Minerals & Chemicals, whose contact person is the deceased Simbhu Dayal Saini. All the above-said documents support the plea of the appellants that the deceased was earning much more than Rs.8,000/- per month at the time of his death.

15. Moreover, even independent of the above-said documents, on the basis of the evidence produced before the Tribunal, this Court is convinced that the income of the deceased deserves to be assessed at a much higher rate than Rs.8000/- per month. Since the best document, as has been stated herein above, was the income tax return, filed prior to the date of the incident, which is Ex.P6 and the monthly income as per the same comes to be Rs.14,681/-, thus, the claim raised by the present appellants that the monthly income was Rs.14,681/- is fair and reasonable and the same deserves to be accepted.

16. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the impugned award dated 17.12.2014 is modified and respondent No.3-Insurance Company is directed to pay an

additional amount of compensation to the tune of Rs.18,98,709/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of actual payment within a period of six weeks from today.

17. All the pending applications stand disposed of in view of the above-said order.

August 31, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes
Whether reportable:-	Yes