2022 INSC 1283

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9233 OF 2022
[@ SPECIAL LEAVE PETITION (CIVIL) NO. 10860 OF 2020]

HARPREET KAUR & ORS. **…APPELLANT(S)**

VERSUS

MOHINDER YADAV & ORS. **…RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Leave granted. With consent of counsel for the parties, the appeal was heard finally.

2. The appellants are aggrieved by the final judgment[1] of the High Court of Punjab & Haryana at Chandigarh, which partly allowed their first appeal, enhancing the compensation awarded to the petitioners from ₹ 6,60,000 (with 6% interest) to ₹ 17,66,000 (with 7.5% interest). The appellants' grievance is that the High Court erred in computation of compensation for loss of income, and failed to award any amount under the head of "loss of love and affection",

1 Final judgment dated 18.03.2019 in FAO No. 2228/2007 (O&M) passed by the Punjab and Haryana High Court.

while computing the final compensation under the Motor Vehicles Act, 1988 (hereafter, "MV Act").

Facts

3. On 29.09.2004, the deceased, late Jagjit Singh was returning from Chandigarh in a car with two other passengers, when a negligently driven truck collided with their car. Grievously injured, he was transferred to the hospital for medical attention, but succumbed to his injuries. The claimant-petitioners instituted a claim before the Motor Accident Claim Tribunal (hereafter, "MACT") under Section 166 of the MV Act, on 23.02.2005.

4. It is an admitted fact (before both forums) that the deceased, who was primarily a farmer/agriculturist, was 35 years old at the time of the incident and was survived by his wife, two minor children, and his mother (4 claimants). The MACT concluded that Jagjit Singh had died in the accident due to rash and negligent driving, and partly allowed the claim with a lumpsum award of ₹6,60,000.[2] Aggrieved, the petitioners preferred an appeal before the High Court in 2007, on the ground that the MACT had only considered the *sauni* crops, and not the rabi/*harri* crops which were also cultivated on the lands. The High Court by the impugned judgment, partly allowed the first appeal and enhanced the total compensation to Rs. 17,66,000 (with 7.5% interest). While all three respondents (driver, owner of truck and insurer) were held to be joint

2 Order dated 25.01.2007 in MAC No. 2 of 23.02.2005.

and severally liable, since the truck was duly insured by the third respondent, the latter was held liable to pay the entire assessed compensation.

5. The calculation undertaken and determination of compensation by the MACT and High Court, are summarised in tabular format below:

Sl. No.	**Head of compensation**	**MACT**	**High Court**
1.	Actual income	₹65,000[3] p.a.	₹ 95,000 p.a.
2.	Future prospects	Not awarded	40% (i.e. ₹ 38,000 p.a.)
3.	Deduction towards personal expenses	1/3	1/4 (i.e., ₹33,250)
4.	Multiplier	15	16
5.	Loss of dependency annual income with the addition of future prospects, and adjusting deduction towards personal expenses x multiplier	₹ 6,45,000	₹ 15,96,000
6.	Loss of spousal consortium	Not awarded	₹ 40,000
7.	Loss of parental and filial consortium	Not awarded	₹1,00,000 (consolidated)
8.	Loss of estate	Not awarded	₹ 15,000
9.	Funeral expenses	₹ 15,000	₹ 15,000
	Total	**₹ 6,60,000** at 6% interest p.a.	**₹ 17,66,000** at 7.5% interest p.a.

Contentions

6. It was argued before this court, that the deceased was a farmer who cultivated approximately 66.95 acres (546 *kanals* and 13 *marlas*). Of this total, his wife (the first appellant) and he owned 113 *kanals* 9 *marlas*, and 24 *kanals* 1

3 Note: the MACT had concluded that income from agricultural land was Rs. 95,000 of which 1/3rd was deducted as expenditure; ₹ 65,000 was the total income. Of this, 1/3rd was further deducted as personal expenditure, to arrive at the final income/contribution to the claimants being ₹ 43,000 p.a.

marlas, respectively. The rest of the land was owned by members of his family (each of his parents, his brother, and sister-in-law). By a written agreement, since 2003, all these lands were cultivated by the deceased who retained 1/3rd of the yield, as payment for his labour/effort. It was also urged that the deceased was the *lambadaar* of the village, and undertook various responsibilities related to this role. A man of enterprise, it was reiterated before this court, that he was young, well educated, and progressive farmer who employed modern farming techniques, and was instrumental in increasing the income from the lands. It was argued that the deceased was central to the income generating activity, and the steady rise in his income was testimony to his dynamic approach. It was submitted that his death affected the income generating capacity, and therefore, the loss of dependency on that score was vital.

7. The first two respondents did not enter appearance and contest the proceedings, despite service of notice. The third respondent urged that since the business is a running one, in fact there is no loss of dependency. It was submitted that the business was on account of the agricultural lands, and since the petitioners, as heirs of the deceased, own and occupy the lands, there is no real fall in the income.

Analysis and conclusion

8. The evidence led before the tribunal, in this case, was both oral and documentary. The petitioner has deposed, and stated that the deceased earned ₹1,00,000/- per month. The documentary evidence included the forms filled and

submitted to the Agricultural Produce Market Committee. Besides, the documents included the agreement between the deceased, his parents, and brother, whereby he was permitted to cultivate the lands owned by them, and entitled to 1/3 of the value of the produce. It is an uncontroverted fact that he was also a *lambardar* of the village, and a graduate. The total extent of land he cultivated was 66 acres. He owned 12 acres. The tribunal arrived at a lump sum amount of ₹ 95,000/- per annum, and deducted 1/3rd from that sum, on the ground that it constituted expenditure, and made a further deduction of 1/3rd amount towards the deceased's living expenses. The High Court added ₹ 38,000/- towards the sum of ₹ 95,000/-, towards future prospects (@ 40%) and deducted 1/4th towards expenses of the deceased, thus resulting in re-computation of income at ₹ 99,750/- per annum. It applied a multiplier of 16 and added other elements to arrive at the final figure of ₹ 17,66,000/- with interest @ 7.5% per annum.

9. This court is of the opinion that even while the High Court increased the level of income, it did not address the issue in the correct perspective. The documentary evidence on record showed that the deceased was cultivating 66 acres, and was entitled to a third of the value of produce from income of those agricultural lands. In addition, he owned and was getting over 12 acres cultivated. The admitted returns were to the tune of ₹ 95,000/-. According to the first appellant (the deceased's wife) the deceased's income was ₹ 1,00,000/- per month; the claim was for an extent of ₹ 1 crore. Whilst there is no evidence for

the latter amount, the documentary evidence supported the appellant's case in regard to cultivation of extensive lands. Having regard to these facts, the assessment of income @ ₹ 95,000/- appears to be on the lower end, and insufficient. It would in the circumstances of the case, be appropriate that the actual income should be computed @ ₹ 1,50,000/- per annum. Applying 40% towards future prospects, the total annual income (₹1,50,000 + ₹60,000) amounts to ₹2,10,000. With a 1/4th deduction (4 dependents), the annual loss of dependency (₹2,10,000 - ₹52,500) would be ₹1,57,500. Applying a multiplier of 16, total loss of dependency (i.e., 1,57,500 x 16) is Rs. 25,20,000.

10. The appellants had urged that the amount towards loss of consortium awarded – especially in favour of the fourth petitioner, is too low. A sum of ₹40,000/- was awarded towards spousal consortium and ₹1,00,000/- towards filial and parental consortium.

11. On the issue of consortium, this court had observed, in *Rajesh v. Rajbir Singh*[4], that:

> *"17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation*

4 (2013) 9 SCC 54

> *awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."*

12. The judgment in *Rajesh v. Rajbir* was followed in other decisions. However, the approach in these decisions, was disapproved by a five-judge bench decision in *National Insurance Co. v. Pranay Sethi*[5], where this court indicated what should be the correct approach in awarding amounts towards consortium:

> *"52. […] 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…."*

Applying this principle, in *Magma General Insurance Co. v. Nanu Ram*[6] this court held as follows:

> *"20. MACT as well as the High Court have not awarded any compensation with respect to loss of consortium and loss of estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in Pranay Sethi. The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant. In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs 15,000 towards loss of estate to Respondents 1 and 2. 21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680: (2018) 3 SCC*

5 (2017) 16 SCC 680

6 (2018) 18 SCC 130

(Civ) 248 : (2018) 2 SCC (Cri) 205] 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 v. Rajbir Singh, (2013) 9 SCC 54].

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". [Black's Law Dictionary (5th Edn., 1979).]

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.[7] However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium."

13. On an application of the principles indicated in *Magma General Insurance Co.,* this court is of the opinion that the filial and parental consortium

7 Rajasthan High Court in *Jagmala Ram* v. *Sohi Ram*, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in *Rita Rana* v. *Pradeep Kumar*, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in *Lakshman* v. *Susheela Chand Choudhary*, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570.

have to be increased. Each of the children, and the mother of the deceased, is entitled to ₹ 40,000/-. Thus, the total amount payable towards filial and parental consortium is ₹ 1,20,000/-.

14. In view of the above findings, the appeal deserves to be allowed. The appellants are entitled to ₹ 25,20,000/- towards loss of dependency; and the three appellants being the children and mother of the deceased, are entitled to ₹40,000/- each towards filial and parental consortium. The impugned judgment is modified to the above extent; the rate of interest, and the other components, directed to be payable, are left undisturbed. The appeal is allowed in these terms, without order on costs.

…….....J.
[KRISHNA MURARI]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI,
DECEMBER 15, 2022.