

**2023 STPL(Web) 22 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

UNITED INDIAN INSURANCE COMPANY LIMITED

Appellant

VERSUS

SMT. RAM PIARI AND OTHERS

Respondents

SMT. RAM PIARI

Appellant

VERSUS

UNITED INDIAN INSURANCE COMPANY LIMITED AND OTHERS

Respondents

FAO Nos. 90 of 2017 & FAO No. 607 of 2018-Decided on 7-7-2023

Compensation, MACT

Motor Vehicle Act, 1988 – Section 166 - MACT – Award modified – Funeral expenses reduced from Rs 25000/- to Rs 15000/-. Award of Rs one lac under head loss of love and affection set aside instead Spousal Consortium in favour of respondent No.1 and parental consortium in favour of respondents Nos. 4 to 6 @ Rs.40,000 each. Deceased was self-employed and his age was 59 year – Increase reduced from 15% to 10%. Total amount enhanced marginally.

(Para 15 to 19)

Advocate(s): FAO No. 90 of 2017 For the appellant: Mr. Lalit K. Sharma, Advocate.

For the respondents: Mr. Rajiv Rai, Advocate, for respondent Nos. 1 and 2. Mr. Arun Rana vice Mr. Radhey Shyam Gautam, Advocate, for respondent No.2. Ms. Shikha Chauhan, Advocate, for respondent No.3. Mr. Mukesh Sharma, Advocate, for respondent Nos. 4 to 6. FAO No. 607 of 2018 For the appellant: Mr. Rajiv Rai, Advocate. For the respondents: Mr. Lalit K. Sharma, Advocate, for respondent No.1. Mr. Arun Rana vice Mr. Radhey Shyam Gautam, Advocate, for respondent No.2. Ms. Shikha Chauhan, Advocate, for respondent No.3.

JUDGMENT

Sandeep Sharma, J. (oral)-Since, both the appeals arise out of award dated 18.12.2016 passed by learned Motor Accident Claims Tribunal, Bilaspur, Himachal Pradesh in Claim Petition No. 30/2 of 2015, involving same parties, the same were heard together and are being disposed of vide this common judgment. However, for the sake of clarity, parties shall be referred to as mentioned in FAO No. 90 of 2017.

2. Precisely, the facts of the case, which are common in both the cases, are that on 1.5.2015, deceased Shri Shree Ram son of Banshi Ram, aged 59, boarded a bus bearing registration No. HP-23B-1723 from Village Kot, District Bilaspur. Though above named person had to get down at Village Bharoli Kalan but when the bus reached at a curve near Village Dholag (Gehrian), Tehsil Jhandutta, Bilaspur, driver of the bus, respondent No.3 Vinod Kumar, lost control over the bus and on account of his rash and negligent driving, bus fell down below the road, as a result of which, deceased named herein above, suffered multiple injuries on his person and died on the spot.

3. Respondent No.1, Smt. Ram Piari widow of Shri Shree Ram (hereinafter, referred to as 'claimant'), instituted claim petition under S.166 of the Motor Vehicles Act (hereinafter, 'Act') for grant of compensation on account of death of Shree Ram, being his legal representative. She claimed that since deceased Shree Ram was the sole bread winner in the family, she has been left with no source of income as such, be granted compensation. Claimant named herein above, claimed that the deceased was earning Rs.20,000/- being a Government contractor and besides this, was earning additional sum of Rs.5,000/- by doing agricultural pursuits. She alleged that she spent Rs.1.00 Lakh on the last rites of the deceased.

4. Owner and driver of vehicle, respondent Nos.2 and 3 respectively, by way of reply, though did not dispute the factum of accident and death of Shree Ram but claimed that the amount claimed by the claimant, is highly excessive. Apart from above, both the respondents herein above, claimed that since at

the time of accident, offending vehicle was duly insured with the appellant-insurance company and driver was having valid documents and driving licence, liability, if any, is upon insurance company.

5. Appellant-insurance company, by way of filing separate reply, though admitted the factum of accident and death of deceased named above, but claimed that the bus in question bearing registration No. HP23B-1723 was being driven by the person, who had no valid and effective driving licence to drive such class of vehicle. Apart from above, appellant-insurance company also claimed that there were no valid documents like registration certificate, fitness certificate, route permit and insurance etc.

6. On the basis of pleadings of the parties, learned Tribunal below, framed following issues:

“1. Whether Shri Shri Ram died due to the rash and negligent driving of bus No. HP-23B-1723 by respondent No. 2/driver as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation as claimed, if so, its quantum and from whom? OP parties.

3. Whether the claim petition is not maintainable in the present form? OPR

4. Whether the petitioners have no cause of action? OPR

5. Whether the petitioners have no locus standi to sue? OPR

6. Whether the respondent No.2 was not holding and possessing a valid and effective driving licence to drive the bus as alleged. If so, its effect? OPR-3

7. Whether the bus was being plied in violation of the terms and conditions of the insurance policy as alleged,. If so, its effect? OPR-3

8. Relief.”

7. Subsequently, vide award dated 17.9.2017, learned Tribunal below allowed the claim petition and saddled the appellant-insurance company with liability to pay compensation of Rs. 8,29,064/- alongwith interest at the rate of 7.5 % from the date of filing of petition till the date of deposit. Learned Tribunal below also directed the appellant-insurance company to deposit the award amount within two months, failing which they were held liable to pay interest at the rate of 12% from the date of award.

8. Being aggrieved and dissatisfied with aforesaid award passed by learned Tribunal below, appellant-insurance company has preferred FAO No. 90 of 2017, praying therein to set aside the award and respondent No.1 Ram Piari has filed FAO No. 607 of 2018, for enhancement of award amount, on the ground that adequate compensation has not been awarded on account of death of deceased Shree Ram.

9. Having heard learned counsel for the parties and perused material available on record, this court finds that primary challenge to impugned Award has been laid by the appellant-insurance company on quantum of compensation. Mr. Lalit K. Sharma, Advocate appearing for appellant-insurance company states that the amount awarded under some of the conventional heads is not in conformity with law laid down by Hon'ble Apex Court in National Insurance Co. Ltd. v. Pranay Sethi, (2017)16 SCC 680, as such, same needs to be modified. He states that as per Pranay Sethi, Rs.40,000 could be awarded as consortium whereas, Rs.1.00 Lakh has been awarded by learned Tribunal below. He further contended that as per Pranay Sethi supra, Rs.15,000/- can be awarded on account of funeral charge but learned Tribunal below has awarded 25,000/- under the aforesaid head. He further contended that the deceased was 59 years of age at the time of accident and was not in regular employment, as such, only 10% additional could be granted to the income of the deceased, on account of loss of future prospects, but here also, learned Tribunal below has granted 15% increase on account of aforesaid loss, which is not permissible as per law laid down in Pranay Sethi supra.

10. Mr. Rajiv Rai, learned counsel for the claimant, though fairly admitted that in view of law laid down by Hon'ble Apex Court in Pranay Sethi supra, discrepancies as pointed by learned counsel for the appellant-insurance company, need to be rectified, but claimants are also entitled to certain amount on account of loss of estate and filial consortium, as has been held Hon'ble Apex Court passed in Magma General Insurance Co. Ltd. v. Nanu Ram and Ors., Civil Appeal No. 9581 of 2018 decided on 18.9.2018, (2018) 18 SCC 130.

11. Before ascertaining the correctness and genuineness of rival submissions of learned counsel for the parties, this court finds that though initially, claim petition was filed by Smt. Ram Piari but learned Tribunal below having taken note of the fact that Shree Ram was survived by Ram Piari, wife and Vipin Kumar, Surender Kumar and Vijender Kumar, sons of deceased, also awarded amount in favour above said persons, apart from Ram Piari.

12. Claimant Ram Piari subsequently filed an application in FAO No. 607 of 2018 for impleadment of legal heirs of deceased Shree Ram, named herein above, so that they are also heard at the time of disposal of appeals.

13. Having heard learned counsel for the parties and perused material available on record this court finds that apart from quantum of compensation, challenge has also been laid to the award by appellant-insurance company on the ground that driver of offending vehicle was not having valid and effective driving licence but careful perusal of evidence led on record by respective parties, clearly suggests that insurance company failed to discharge the onus placed upon it to prove that the vehicle was being driven in violation of terms of insurance policy and driver of vehicle was not having a valid and effective driving licence. Record clearly reveals that claimant and respondents Nos. 1 and 2 successfully proved on record that at the time of accident, offending vehicle was duly registered and driver of the same was having a valid and effective driving licence. Since on the date of accident, offending vehicle was insured with appellant-insurance company as detailed above, no illegality can be said to have been committed by learned Tribunal below, while holding appellant-insurance company liable to pay compensation.

14. At this stage, it would be profitable to reproduce following paragraphs of judgment in Pranay Sethi supra, herein below:

“47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided. 48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socioeconomic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-

“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 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.”

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of selfemployed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier. (viii) 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.”

15. Having perused the impugned award, especially the amount awarded under conventional heads vis-a-vis law laid down in Pranay Sethi supra, there appears to be merit in the contention of Mr. Lalit K. Sharma, Advocate appearing for the appellant-insurance company that the award needs to be modified. As per Pranay Sethi supra, no amount can be awarded under loss of love and affection rather, spousal consortium of Rs.40,000/- is to be awarded. Similarly only Rs. 15,000 can be awarded on account of funeral charges. In the instant case, learned Tribunal below has erred while awarding Rs.1.00 Lakh as consortium and Rs.25,000/- as funeral charges and as such, award needs to be modified on this count. Similarly this court finds that as per Pranay Sethi supra, only increase of 10% is to be given to a person, who is self employer and above the age of 50 years.

16. Though, in the case at hand, deceased was self employed and his age was 59 year, but yet learned Tribunal below proceeded to order increase of 15% which is not in accordance with law and as such, award needs to be modified on that account also.

17. Recently Hon'ble Apex Court in Janabai v. ICICI Lambord Insurance Co. Ltd. (2022) 10 SCC 512, has reiterated that compensation on account of loss of love and affection is not permissible but compensation on account of spousal and parental consortium for children is admissible. Relevant paras of the judgment supra, read as under:

“14. The appellant has claimed compensation on account of love and affection as well on account of spousal consortium for wife and for the parental consortium for the children in the calculation given to this Court but in view of three Judge Bench judgment reported as United India Insurance Company Limited v. Satinder Kaur & Ors. [(2021) 11 SCC 780], the compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. This Court held as under:

“30. In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.

31. 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. Children are valued for their love and affection, and their role in the family unit.

32. 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 permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] .

34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.”

15. The evidence of appellant No. 1 on affidavit is that her husband was getting salary of Rs.12,450/- and that he was over 50 years of age. The learned Tribunal assessed monthly income of the deceased as Rs.10,000/- in the absence of proof of salary. Therefore, keeping in view the income and the age and the future prospects in terms of judgment of this Court in Pranay Sethi, the compensation is assessed as follows...”.

18. In view of Janabai supra, rendered by Hon'ble Apex Court, and in terms of Magma General Insurance Co. Ltd. v. Nanu Ram (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153], filial consortium is required to be awarded at the rate of 40,000/- in case of children of deceased Shri Shree Ram i.e. respondents Nos. 4 to 6.

19. In view of the details discussion made herein above as well as law taken into consideration, the award passed by learned Tribunal below is modified as under:

Head	Amount (in Rs.)
A. Loss of dependency	704064
B. Loss of estate	15000
C. Spousal Consortium in favour of respondent No.1 and parental consortium in favour of respondents Nos. 4 to 6 @ Rs.40,000 each	160000
D. Funeral expenses	15000
Total	894064

20. The apportionment of the amount shall remain the same, as held by learned Tribunal below. Similarly, so far rate of interest is concerned, in view of the prevailing market rate of interest at the time of accident, same also calls for no interference as such, is upheld.

21. In view of above, award passed by learned Tribunal below stands modified in the afore terms. Both the appeals are disposed accordingly, alongwith all pending applications. Interim directions, if any, stand vacated.
