

Before Dr. Ravi Ranjan, J.

SANTOSH DEVI AND OTHERS—Appellants

versus

RAVINDER SINGH AND OTHERS—Respondents

FAO No. 4041 of 2004

October 29, 2019

Motor Vehicles Act, 1988—Motor accident—Death case—Claim petition by deceased wife, children and parents—Tribunal awarded compensation—Claimants' appeal for enhancement—Deduction of personal expenses—Held, since dependents are five in number, deduction will be of only ¼ of the deceased's income for personal expenses. Future prospects—Deceased below 40 years of age—Whether self-employed, daily wager or working on fixed salary—40% of the established income to be added. Loss of consortium—Classification of—Spousal consortium, filial consortium and parental consortium—All three categories are entitled to consortium of Rs.40,000/- each. Funeral expenses and loss of estate—Awarded Rs.15000/- each—Tribunal's award modified accordingly.

Held that, so far as the deduction of personal expenses is concerned, it is quite clear from the decision of the Hon'ble Apex Court rendered in **Sarla Verma case (supra)** that, if the number of dependents is between 4 to 6, then only 1/4th of the income has to be deducted against the head of 'personal expenses' of the deceased. In the present case, they are five in number. Even assuming that father was not dependent upon the deceased, in such case also, the number of dependents should be four being widow and two minor children and mother of the deceased and, as such, this limb of argument advanced on behalf of the appellants appears to be correct. Accordingly, the impugned Award is required to be modified on this count.

(Para 4)

Further held that, Taking up the issue of 'future prospect', now after the decision of the Constitution Bench of the Hon'ble Supreme Court of India rendered in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009, even assuming that the deceased was self-employed or was employed on a fixed salary or was a daily wage earner, if his age is below 40 years then 40% of the

established income has to be added against the head of 'future prospect' for computation of dependency. Thus, the Award is required to be modified on this count also. (Para 5)

Further held that, so far as the consortium part is concerned, it has to be allowed in terms of the decision of the Hon'ble Apex Court in Pranay Sethi case (supra) holding that Rs.40,000/- has to be given for loss of consortium. However, the Hon'ble Supreme Court in its subsequent decision rendered in Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others, 2018(4) R.C.R. (Civil) 333, after considering, explaining and following the decision rendered in *Pranay Sethi's case (supra)*, has classified the consortium to be of three types. The first would be Spousal Consortium which would be available to the living spouse on the death of one of them and second would be Filial Consortium, which would be available to the parents for the death of their child and the third would be Parental Consortium which would be available to the children for loss of their parents or one of the parents. Hon'ble Supreme Court has held that all of them would be entitled for an amount of Rs.40,000/- each as against the respective head of loss of consortium.

(Para 6)

Lekh Raj Sharama, Advocate
for the appellant

Surinder Gamdhi, Advocate
for respondent No.1.

Aseem Aggarwal, Advocate
for respondent No.3-Insurance Company

Dr. RAVI RANJAN, J. oral

(1) I have heard learned counsel for the appellants as well as respondent No.3-Insurance Company and have perused the records of this case.

(2) This appeal has been preferred by the claimants-appellants for enhancement of the awarded compensation amount which was granted vide order dated 03.11.2001 by the Motor Accident Claims Tribunal, Rewari (for brevity, 'the Tribunal') in Claim Petition No.64 of 1999 with respect to the Motor Vehicular Accident having taken place on 30.06.1999 in which the husband of the appellant No.1-Santosh Devi, v.i.z., Sumer Singh had died. Since there is no cross-objection or cross-appeal and this Appeal has been preferred by the claimants-

appellants only challenging the assessment of compensation amount, other details are not required to be discussed.

(3) It appears from the impugned Judgment and Award, that an amount of Rs. 3,36,400/- has been awarded as compensation to the claimants-appellants by the Tribunal. Learned counsel for the appellants has submitted that it is at much lower side as nothing has been given towards the head of 'future prospect' and for loss of consortium, only Rs.5,000/- has been allowed. So far as the funeral and transportation charges are concerned, only Rs.5,000/-has been allowed. That apart, it is submitted that since the number of dependents is five, only 1/4th of income of the deceased should have been deducted as his personal expenses as per the law laid down by the Hon'ble Apex Court in *Sarla Verma and Ors. versus Delhi Transport Corporation and Another*¹

(4) So far as the deduction of personal expenses is concerned, it is quite clear from the decision of the Hon'ble Apex Court rendered in *Sarla Verma* case (supra) that, if the number of dependents is between 4 to 6, then only 1/4th of the income has to be deducted against the head of 'personal expenses' of the deceased. In the present case, they are five in number. Even assuming that father was not dependent upon the deceased, in such case also, the number of dependents should be four being widow and two minor children and mother of the deceased and, as such, this limb of argument advanced on behalf of the appellants appears to be correct. Accordingly, the impugned Award is required to be modified on this count.

(5) Taking up the issue of 'future prospect', now after the decision of the Constitution Bench of the Hon'ble Supreme Court of India rendered in *National Insurance Company Ltd. versus Pranay Sethi and others*² even assuming that the deceased was self-employed or was employed on a fixed salary or was a daily wage earner, if his age is below 40 years then 40% of the established income has to be added against the head of 'future prospect' for computation of dependency. Thus, the Award is required to be modified on this count also.

(6) So far as the consortium part is concerned, it has to be allowed in terms of the decision of the Hon'ble Apex Court in *Pranay Sethi case* (supra) holding that Rs.40,000/- has to be given for loss of

¹ 2009 ACJ 1298 (SC)

² 2017 (4) R.C.R. (Civil) 1009

consortium. However, the Hon'ble Supreme Court in its subsequent decision rendered in *Magma General Insurance Co. Ltd. versus Nanu Ram Alias Chuhru Ram and others*,³ after considering, explaining and following the decision rendered in *Pranay Sethi's* case (supra), has classified the consortium to be of three types. The first would be Spousal Consortium which would be available to the living spouse on the death of one of them and second would be Filial Consortium, which would be available to the parents for the death of their child and the third would be Parental Consortium which would be available to the children for loss of their parents or one of the parents. Hon'ble Supreme Court has held that all of them would be entitled for an amount of Rs.40,000/- each as against the respective head of loss of consortium.

(7) In the present case, claimants No.1 is the widow of the deceased and, as such, she would be entitled for spousal consortium of Rs.40,000/-. So far as claimants No.2 and 3, i.e., minor children of the deceased are concerned, they would get Rs.40,000/-each against the head of 'parental consortium'. So far as the mother and father of the deceased are concerned, they will be allowed for filial consortium of Rs.40,000/-.

(8) So far as funeral expenses is concerned, claimants-appellants would be entitled for Rs.15,000/- and Rs.15,000/- for loss of estate.

(9) Accordingly, this Court would modify the Award of the Tribunal by making following calculation:-

Sr. No	Head	Compensation Awarded
1.	Income of the deceased assessed by the Tribunal	Rs.2400/-per month
2.	40% of the income added as future prospect.	Rs.960/-(i.e 40% of the income) Rs.2400+Rs.960)=Rs3360/-
3.	Deduction 1/4 th towards personal expenditure	Rs 3360x1/4 th =Rs.840 Rs 3360-Rs.840=Rs.2520.
4.	Total Income	Rs.2520/-
5.	Multiplier chosen by the Tribunal	17

³ 2018(4) R.C.R. (Civil) 333

6.	Total loss of dependency	Rs.5,14,080/--(Rs.2520x12x17)
7.	Funeral expenses	Rs.15,000/-
8.	Loss of estate	Rs.15,000/-
9.	Loss of consortium (spousal, parental and filial consortium)	Rs.2,00,000/--(Rs.40,000/- each payable to claimants-appellants).
	Total Compensation	Rs.7,44,080/-
	Enhanced amount of compensation	Rs.7,44,080/--(minus)Rs.3,36,400/- = Rs.4,07,680/-

(10) Interest rate allowed @ 9% per annum to be calculated from the date of filing of the claim petition till the realization of the awarded amount is kept intact.

(11) Accordingly, the impugned Award stands modified and enhanced to the aforesaid extent.

(12) In the result, this Appeal stands allowed to the extent as indicated above. However, the parties shall bear their own costs.

Tribhuvan Dhaiya