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**(2023) 12 RAJ CK 0086**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 599 Of 2004, 1169 Of 2005, 3490 Of 2011

Ranjeet Singh And Others

APPELLANT

Vs

Manish Kumar And Others

RESPONDENT

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**Date of Decision :** 22-12-2023

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 128, 177

**Citation :** (2023) 12 RAJ CK 0086

**Hon'ble Judges :** Birendra Kumar, J

**Bench :** Single Bench

**Advocate :** Surendra Surana, Anil Bachawat, Sanjay Raj Baliwal

**Final Decision :** Allowed

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## **Judgement**

Birendra Kumar, J

1. Three persons, namely, (1) Sharwan Singh, (2) Shaitan Singh and (3) Salam Singh were going on a Luna Moped. On 20.07.2001, a rash and negligent Jeep bearing registration No.RJ-12-T-0061 coming towards Luna dashed against it, which resulted in injury and death of all three above named. For the incident aforesaid, at Police Station Kalandri, a case No.72/2001 was registered against driver of the offending Jeep and after investigation of the case, the Police submitted charge-sheet against the driver. The offending Jeep was insured with the New India Assurance Company Limited.

2. The dependents of Shaitan Singh filed Motor Accident Claim Case No.641/2001. The dependents of Salamsingh filed claim case No.642/2001 and dependents of Sharwansingh filed claim case No.643/2001. All the claim cases were decided by a common judgment dated 10.07.2003 whereby, certain awards were made in favour of claimants by the Motor Accident Claims Tribunal.

3. The claimants are not satisfied with the quantum of award decided by the Tribunal, hence, S.B. Civil Misc. Appeal No.1169/2005 was filed against the

judgment in claim case No.641/2001, S.B. Civil Misc. Appeal No.599/2004 was filed against judgment in claim case No.643/2004 and S.B. Civil Misc. Appeal No.3490/2011 above was filed in claim case No.642/2001.

4. With the consent of learned counsels for the parties all the appeals were heard together and are being disposed of by this common judgment.

5. Two common questions arising in these appeals are:- (1) Is the Tribunal justified in deducting 25% of the compensation amount for contributory negligence of the deceased; (2) Is the submission of learned counsel for the Insurance Company that for loss of consortium only Rs.40,000/- would be awarded consistent with the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi & ors., (2017) 16 SCC 680 and the said Rs.40,000/- would be distributed amongst all the claimants who have lost different consortium.

6. Learned counsel for the appellants contends that the question of contributory negligence is a question of fact and must be established by evidence by the party asserting it. Contributory negligence cannot be presumed on the basis of certain facts unless there is evidence that negligence of the deceased had actually contributed to the accident. Learned counsel contends that applicant's witness No.4-Ramsingh is eye-witness of the incident and in his testimony Ramsingh is clear enough that the Luna was moving slowly in its proper direction and the offending Jeep was rash and negligent in causing accident to the Luna by crossing its lane to the wrong side. There is no other evidence brought by the respondents to make out a case of contributory negligence.

7. Learned counsel for the Insurance Company contends that Section 128 of the Motor Vehicles Act prohibits the driver of the two wheeler to carry more than one person in addition to himself. Chapter XIII provides for penalties for contravention of the provisions of the Act, the Rules and Regulation or any notification made under the statutory power, therefore, negligence on the part of the deceased persons would stand established. Learned counsel has relied on the judgment of the Hon'ble Supreme Court in Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum & ors., decided on 17.01.1997. 8. Section 128 of the Motor Vehicles Act reads as follows:-

"128. Safety measures for drivers and pillion riders-(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon."

9. Section 177 of the Motor Vehicles Act prescribes for punishment on

contravention of the provisions of the Act which reads as follows:-

"177. General provision for punishment of offences – Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishment for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees."

10. Assuming that the victims of motor accident were admittedly in contravention of the provisions of Section 128 of the Act and also assuming that violation of safety measures is a sort of negligence on the part of victim of accident, the same cannot stand to prove that their negligence has contributed to the accident in absence of evidence to the contrary. The record reveals that there is complete lack of evidence that negligence of the deceased had contributed to the accident, therefore, the Tribunal has wrongly deducted 25% of the claim amount against contributory negligence by entering into arena of conjectures and surmises. The Rajkot Municipal Corporation case (supra) was decided on quite different facts and circumstances of that particular case. No question of contributory negligence was involved in that case rather, issue of negligence on the part of tortfeasor was there. Therefore, in the facts of the case that would not help the insurance company.

Identical question fell for consideration before the Hon'ble Supreme Court in Mohammed Siddique & Anr. Vs. National Insurance Company Ltd. & ors., (2020) 3 SCC 57. In para 12 of the said judgment, the Hon'ble Supreme Court observed as follows:

"12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such

cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance."

As noticed above, in absence of any evidence to show that wrongful act on the part of the victims of the accident contributed either to the accident or to the impact of the accident, hence deduction of 25% towards contributory negligence is clearly unjustified and the same stands set aside. Question No. 2

11. Learned counsel for the Insurance Company vehemently contends that in Pranay Sethi's case (supra), the five judges bench of the Hon'ble Supreme Court has said that against loss of consortium only Rs.40,000/- would be payable and in subsequent judgment in Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram & ors., (2018) 18 SCC 130 this fact was not taken note of.

12. In Magma General Insurance Company Limited (supra), the two judges bench of the Hon'ble Supreme Court had considered the judgment in Pranay Sethi's case and observed as follows:-

"21. A 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.

21.1 Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of "company, society, cooperation, 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 worldwide 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."

13. The said view was reiterated in *United India Insurance Company Limited Vs. Satendra & Ors.* reported in (2021) 11 SCC 780 and in *Janabai & Ors. Vs. M/s. ICICI Insurance Company Limited*, (2022) 10 SCC 512 wherein, it was held that each individual claimants having lost different nature of consortium would be entitled for Rs.40,000/- each. Therefore, it is held that all the claimants who have lost spousal consortium, filial consortium and parental consortium would be entitled for Rs.40,000/- individually.

S.B. Civil Misc. Appeal No. 1169/2005:-

14. It is not disputed that at the time of death, victim Shaitan Singh was aged about 25 years. The claimants in their oral statement stated that at the time of death, Shaitan Singh was earning Rs.8,000/-, as he was in the business of erecting marriage mandaps. The learned Tribunal disbelieved the oral evidence of income of the deceased and chose Rs.4,000/- without any supporting material, of income of the deceased. It is not disputed that the deceased was an earning person. He was aged about 25 years and was engaged in a business, as claimed by the claimants. No contrary evidence was brought on the record. The amount claimed was not very exorbitant and excessive one. Moreover, documentary evidence of private manual work to established income cannot be assured in each and every case. Therefore, the Tribunal should have accepted the pleadings and evidence of the claimants that the deceased was earning Rs.8,000/- per month. Since the deceased has left three dependents i.e., wife and parents, the deduction should have been 1/3rd for personal expenses of the deceased. After deducting 1/3rd amount, the multiplicand comes at Rs.5,334/-. This figure is multiplied by 12 to get yearly multiplicand and it is further multiplied by multiplier of 18 the appropriate multiplier in the age group of the deceased. The total comes to Rs.11,52,144/-. Besides the aforesaid, the claimants are entitled

for 40% of the aforesaid amount for loss of future prospects of the deceased, who was a self-employed person. This amount is Rs.4,60,857/-. Each of the three claimants would be entitled for Rs.40,000/-individually for loss of their respective consortium. Besides the aforesaid, Rs.30,000/- would be payable under the head of funeral expenses and loss to the estate. The total compensation is calculated at Rs.17,63,001/-. The findings of the Tribunal that the sisters were not dependent on the deceased stands affirmed because parents of the sisters were alive on the date of accident and are claimants herein. The aforesaid amount shall be payable by the insurer within two months minus already paid amount alongwith interest @ 6% from the date of application, failing which, 8% interest would be payable till the date of realization. Out of the total compensation, 50% would go to the widow of the deceased and 50% to the parents. The contrary calculation of the Tribunal is set aside and this appeal stands allowed to the aforesaid extent.

S.B. Civil Misc. Appeal No. 3490/2011:-

15. Deceased Salamsingh was aged about 18 years at the time of death. This has been accepted by the Tribunal. He was engaged in the business of selling milk after collecting the same from different suppliers. He was earning Rs.150/- per day. The Tribunal did not accept the oral testimony of his mother, who is one of claimants and adopted monthly income as Rs.1500/-.

16. Learned counsel for the appellants contends that the mother was not cross-examined on the income of the deceased nor any contrary evidence was brought on record, hence, only for absence of documentary evidence, the Tribunal should not have rejected the claim of income, which was not very exorbitant or excessive one. This Court finds substance in the submission of learned counsel for the appellants. The income of the deceased was proved by oral evidence and the amount claimed is not a very excessive one, therefore, there was no reason to reject the oral evidence in absence of contrary evidence available on record. Accordingly, the monthly income of the deceased is taken as Rs.4,500/-. Since the deceased left only mother as dependent, 50% of the income is deducted as personal and living expenses of the deceased. The grand-mother is not a dependent on the deceased. Thus, the payable compensation is calculated as  $\text{Rs.2,250/-} \times 12 \times 18 = \text{Rs.4,86,000/-}$ . 40% of the same would be payable for future prospects of the deceased. The amount is calculated as Rs.1,94,400/-. Besides the aforesaid, mother would be entitled for Rs.40,000/- for loss of consortium. Rs.30,000/-would be payable against funeral expenses and loss to the estate. The payable compensation is calculated as Rs.7,50,400/-. The aforesaid amount shall be payable by the insurer to the mother of the victim within two months minus already paid amount alongwith interest @ 6% from the date of application, failing which, 8% interest would be payable till the date of realization. The contrary calculation of the Tribunal is set aside and this appeal stands allowed to the aforesaid extent.

S.B. Civil Misc. Appeal No. 599/2004:-

17. The victim of the accident Sharwan was aged about 10 years at the time of his death and her mother has deposed that he was engaged in selling milk and was earning Rs.100 per day. The learned Tribunal did not accept the income of the deceased in absence of any documentary evidence and came to the conclusion that the deceased was aged about 8 years at the time of death.

18. In *Kishan Gopal & Ors. Vs. Lala & Ors.* reported in (2014) 1 SCC 244, the Hon'ble Supreme Court adopted multiplicand of Rs.30,000/- per year. *Kishan Gopal (supra)* was also case of a death of child. Prior to that in *Lata Wadhwa & Ors. Vs. State of Bihar & Ors.* reported in (2001) 8 SCC 197, the Hon'ble Supreme Court considered the dwindling value of money while considering adoption of just notional income. That was also a case of death of a child.

20. In view of the aforesaid judgments, if the claim of the appellant that the deceased was earning Rs.36,000/- per year is accepted after more than 10 years of the judgment in *Kishan Gopal's* case (*supra*), that would not be unreasonable rather, would be a just multiplicand to decide the compensation. No contrary evidence is there on record to disbelieve the evidence of one of the claimants regarding income of the deceased. 50% of the aforesaid amount is deducted for personal expenses of the deceased. The multiplicand is calculated as Rs.18,000/- yearly income and same is multiplied with multiplier of 15, the amount comes to Rs.2,70,000/-. 40% of the same is payable for loss of future prospects of the deceased. This amount comes to Rs.1,08,000/-. Besides the aforesaid, both the claimants, who are parents are entitled to 40,000/- individually for loss of consortium. Rs.30,000/- is payable under the head funeral expenses and loss to the estate. The total payable compensation would be Rs. 4,88,000/-. The aforesaid amount shall be payable by the insurer within two months minus already paid amount alongwith interest @ 6% from the date of application, failing which, 8% interest would be payable till the date of realization. The contrary calculation of the Tribunal is set aside and this appeal stands allowed to the aforesaid extent.