

Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram on 18 September, 2018

Equivalent citations: AIRONLINE 2018 SC 1249, AIRONLINE 2018 SC 189

Author: Indu Malhotra

Bench: Indu Malhotra, R. F. Nariman

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9581 OF 2018
(Arising out of SLP (Civil) No. 3192 of 2018)

Magma General Insurance Co. Ltd.

...Appellant

Versus

Nanu Ram Alias Chuhru Ram & Ors.

...Respondents

J U D G M E N T

INDU MALHOTRA, J.

Leave granted.

1. This Special Leave Petition has been filed by the Insurance Company to challenge the compensation awarded on certain counts by the Punjab & Haryana High Court in FAO No. 6943 of 2015 dated 27.09.2017, to be contrary to the Constitution Bench judgment in National Insurance Co. Ltd. v. Pranay Sethi.¹

2. The factual matrix of the present case, briefly stated, are as under:

1 (2017) 16 SCC 680 On 01.12.2013, the deceased was riding his motorcycle (Registration No. HR-1B-7681) from Ambli Village to Arjun Majra Village. A relative of the deceased –Mr. Rakesh Kumar was following him on a separate motorcycle on the Sadhaura-Naraingarh Road. A Renault car bearing Registration No. HR-2AB-4646 driven by Respondent No.3, came from the side, and hit the motorcycle driven by the deceased. The accident was witnessed by Mr. Rakesh Kumar.

As a result of the accident, the deceased fell and sustained multiple injuries. He was taken to the Government Hospital, Naraingarh from where he was referred to PGI, Chandigarh. On 02.12.2013 the victim was taken to Government Hospital, Panchkula where the doctors declared him dead.

On the same day, F.I.R. No. 337 was registered at Police Station, Naraingarh on the statement of Mr. Rakesh Kumar who was an eye-witness to the accident.

3. The father, brother, and sister of the deceased filed Claim Petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claim Tribunal, Yamuna Nagar (“hereinafter referred to as MACT”) praying for compensation of Rs. 50,00,000 along with Interest from the date of the accident till the date of realization.

Mr. Rakesh Kumar, the eye-witness was examined before the MACT. He deposed stated that the accident occurred due to the rash and negligent driving of Respondent No. 3.

The MACT after considering the evidence placed on record, came to the finding that the accident took place due to the rash and negligent driving of Respondent No. 3.

The deceased was 24 years old, and was engaged in the business of manufacturing Namkeen products. The Claimants contended that the income of the deceased was Rs. 15,000 per month. However, they were unable to produce evidence of the income of the deceased. The MACT took the income of the deceased to be that of an unskilled worker i.e. Rs. 5,342 per month on the basis of the Notification dated 13.08.2013 issued by the Labour Commissioner, Haryana prescribing minimum wages for different categories of work.

The MACT awarded compensation to the family of the deceased as follows:

Head	Compensation awarded
i. Income:	Rs. 5,432 per month
ii. Deduction towards personal expenses:	Rs. 1780 (1/3rd of income)

iii. Multiplier: 7 (as per the age of the father)

iv. Loss of future income : Rs. 2,99,208 [i.e. (5432 – 1780) x 12x7] v. Loss of love and Rs. 25,000 affection:

vi. Funeral Expenses: Rs. 15,000

Total Compensation awarded: Rs. 3,39,208 with interest @ 7% from the date of the claim until realization and costs.

The MACT did not award any compensation to the brother of the deceased, as he could not be considered to be a dependent. Compensation was awarded to the aged father and the unmarried sister of the deceased, who were held to be dependents.

The Insurance Company and the driver of the vehicle – Respondent No. 3 both were held to be jointly and severally liable to pay the compensation.

4. The Respondent Nos. 1 and 2 – i.e. the father and sister of the deceased filed an Appeal against the order of the MACT before the Punjab and Haryana High Court praying for enhancement of compensation.

The High Court held that the facts relating to the accident were admitted and proved before the MACT. It was established that the deceased had died as a result of the rash and negligent driving of Respondent No. 3.

The High Court found that the MACT had used the wrong principle for application of the multiplier. The multiplier ought to have been taken on the basis of the age of the deceased, and not of his father.

The High Court re-assessed the compensation as follows:

Head Compensation awarded i. Income (as per minimum Rs. 6,000 per month wages):

ii. Future prospects at 50% Rs. 3,000 per month of (i):

iii. Total Income: Rs. 9,000 iv. Deduction of personal Rs. 3,000 (i.e. 1/3rd of total expenses: income) v. Multiplier: 18 (as per age of deceased) vi. Loss of future income: Rs. 12,96,000 [i.e. (9,000 – 3,000) x 12 x 18] vii. Loss of love and Rs. 1,00,000 (i.e. Rs. 50,000 affection: each) viii. Funeral expenses: Rs. 25,000 Total Compensation Rs. 14,21,000 with interest awarded: @ 9% from the date of filing the claim petition till realization.

The amount was held to be payable jointly and severally by the Appellant – Insurance Company and Respondent No. 3.

5. Aggrieved by the Order of the High Court, the Insurance Company filed the present S.L.P. before this Court, praying for setting aside the judgment of the Punjab and Haryana High Court.

6. We have heard learned Counsel for the parties, and perused the record.

The principal grounds on which the S.L.P. has been filed by the Insurance Company are:

i. The High Court has erroneously awarded 50% towards Future Prospects, even though as per the judgment of this Court in National Insurance Co. Ltd. v. Pranay Sethi.² only 40% could have been awarded. ii. The deduction of the income of the deceased ought to have been made at $\frac{1}{2}$, and not at $\frac{1}{3}$ rd, as he was a bachelor.

iii. The minimum wages of the deceased ought to have been taken at Rs. 5,341 and not Rs. 6,000 as that was the prevailing rate of minimum wages in Haryana at the time of the accident.

iv. The father and sister of the deceased could not be considered as dependants, and were not entitled to compensation. In the case of death of a bachelor, only the mother could be considered to be a dependant. v. The grant of Rs. 1,00,000 on account of loss of love and affection, and Rs. 25,000 towards funeral expenses is erroneous.

It was contended that only Rs. 30,000 could have been awarded as per the judgment in Pranay Sethi (supra).

7. The dependents of the deceased refuted the grounds raised by the Insurance company, and reiterated their claim for enhanced compensation.

8. The grounds of challenge by the Insurance Company are dealt with seriatim.

8.1. With respect to the issue of Future Prospects, a Constitution Bench of this Court in Pranay Sethi (supra) has held that in case the deceased was self-employed or on a fixed salary, and was below 40 years of age, an addition of 40% of the established income should be granted towards Future Prospects.

Future Prospects are to be awarded on the basis of:

i. the nature of the deceased's employment; and ii. the age of the deceased.

In the present case, it is claimed by the family of the deceased that he was engaged in making namkeen, and was earning a monthly income of about Rs. 15,000 per month. However, no evidence was brought on record to establish the same. The MACT as well as the High Court assessed the income of the deceased on the basis of the minimum wage of an unskilled worker. The nature of his employment being taken as a self-employed person.

The deceased was 24 years old at the time of the accident. Hence, future Prospects ought to have been awarded at 40% of the actual income of the deceased, instead of 50% as awarded by the High Court.

Hence, the judgment of the High Court on this issue is modified to that extent.

8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been $\frac{1}{2}$, and not $\frac{1}{3}$ rd, since the deceased was a bachelor.

This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third.

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2 – an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of $\frac{1}{3}$ rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count.

8.3. With respect to the income of the deceased, as the family could not produce any evidence to show that the income of the deceased was Rs. 15,000 per month, as claimed, the High Court took his income to be Rs. 6,000, which is marginally above the minimum wage of an unskilled worker at Rs. 5,342.

This finding is also not being interfered with.

8.4. The Insurance Company has submitted that the father and the sister of the deceased could not be treated as dependents, and it is only a mother who can be dependent of her son. This contention deserves to be repelled. The deceased was a bachelor, whose mother had predeceased him. The deceased's father was about 65 years old, and an unmarried sister. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents.

8.5. The Insurance Company has contended that the High Court had wrongly awarded Rs. 1,00,000 towards loss of love and affection, and Rs. 25,000 towards funeral expenses.

The judgment of this Court in Pranay Sethi (supra) has set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant extract of the judgment is reproduced herein below :

“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.” (Emphasis supplied) As per the aforesaid judgment, the compensation of Rs. 25,000 towards funeral expenses is decreased to Rs.15,000.

The amount awarded by the High Court towards loss of love and affection is, however, maintained.

8.6 The 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 recognized by the Constitution Bench in Pranay Sethi (supra).

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 Respondent Nos. 1 and 2.

8.7 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.³ Spousal consortium is generally defined as rights pertaining to the relationship of a husband and wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation.”⁴ 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

3 *Rajesh and Ors. vs. Rajbir Singh and Ors.* (2013) 9 SCC 54
4 *BLACK'S LAW DICTIONARY* (5th ed. 1979)

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.

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.

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 count⁵. However, there was no clarity with 5 Rajasthan High Court in *Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors* 2017 (4) RLW 3368 (Raj);

Uttarakhand High Court in Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors.

respect to the principles on which compensation could be awarded on loss of Filial Consortium.

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.

9. In light of the above mentioned discussion, Respondent Nos. 1 and 2 are entitled to the following amounts : □Head Compensation awarded i. Income: Rs. 6,000 ii. Future Prospects: Rs. 2,400 (i.e. 40% of the income) iii. Deduction towards Rs. 2,800 [i.e. 1/3rd of personal expenditure: (Rs.6,000 + Rs.2,400) iv. Total Income: Rs. 5,600 [i.e. 2/3rd of (Rs.6,000 + Rs.2,400] vi. Loss of future income: Rs. 12,09,600 (Rs.5,600 x 12 x

18) vii. Loss of love and Rs. 1,00,000 (Rs. 50,000 each) affection:

viii. Funeral expenses: Rs. 15,000 ix. Loss of estate: Rs. 15,000 x. Loss of Filial Rs. 80,000 (Rs. 40,000 payable 2014 (3) UC 1687;

Karnataka High Court in Lakshman and Ors. v. Susheela Chand Choudhary & Ors (1996) 3 Kant LJ 570 (DB) Consortium: to each of Respondent Nos.1 and 2) Total compensation awarded: Rs. 14,25,600 alongwith Interest @ 12% p.a. from the date of filing of the Claim petition till payment.

Out of the amount awarded, Respondent No. 1 is entitled to 60% while Respondent No.2 shall be granted 40% alongwith Interest as specified above.

10.The Insurance Company and Respondent No. 3 are held jointly and severally liable to pay the compensation awarded.

The Appellant – Insurance Company will pay the full amount of compensation awarded hereinabove to Respondent Nos. 1 and 2 and can recover 50% of the amount from Respondent No. 3.

11.The appeal is disposed of in the above terms.

.....J. (R. F. Nariman)J. (Indu Malhotra) New Delhi
September 18, 2018.