

2023:PHHC:046320

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6563-2016 (O&M)
Date of Decision: March 28, 2023

Cholamandalam MS General Insurance Company Limited
...Appellant

VERSUS

Naib Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vandanaa Malhotra, Advocate
for the appellant.

Mr.Rohit Kumar, Advocate
for respondents No.1 to 3.

Mr.J.S.Ghumman Dewan, Advocate
for respondents No.4 and 5.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 20.07.2016 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the claimants, on account of death of Paramjit Kaur, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award, had granted compensation to the extent of Rs.16,52,000/- to the claimants. Even, the liability of the driver, owner and insurance company was held to be joint and several.

Being dissatisfied with the Award, so passed, the insurance

company, who was respondent No.3, before the Tribunal, has filed the present appeal.

For the convenience of the discussion, the parties are referred as claimants and respondents, as making appearance before the Tribunal.

As per version of the claimants, on 13.08.2014, Paramjit Kaur along with Surjit Kaur was travelling in bus bearing registration No.PB-03AC-7637 from Maur to Ram Nagar and both of them were to alight the bus at bus stand, village Ram Nagar. At about 3.10 p.m., the driver of the aforesaid bus, stopped the bus for the alighting of the aforesaid passengers namely Surjit Kaur and Paramjit Kaur. Surjit Kaur had alighted from the bus, but when, Paramjit Kaur was yet to alight the bus, the driver of the bus, namely Sukhdev Singh-respondent No.1, rashly and negligently, speeded up the bus, as a result whereof, Paramjit Kaur fell on the ground and came under the wheel of the bus and died at the spot. Post-mortem examination was conducted on 14.08.2014. Even, proceedings under Section 174 Cr.PC. were conducted by the police, in connivance with driver and owner of the bus in question.

Further, it was the version, coming forth, in the claim petition that deceased Paramjit Kaur was healthy, hard working and not suffering from any ailment. She was housewife and was running a dairy farm, by keeping 5-6 buffaloes. She used to indulge in sale of milk and was earning Rs.20,000/- per month. As such, on account of death of Paramjit Kaur, claimants had sought compensation to the extent of Rs.30 lakh, together with the interest @ 18% per annum, from the date of accident, till the payment, with litigation costs.

Respondents No.1 and 2, in their reply, besides raising legal objections, had also asserted that no accident had taken place with the vehicle of the answering respondents. In fact, the accident had taken place, due to own negligence of Paramjit Kaur. As per the occurrence, the police had conducted the proceedings under Section 174 Cr.P.C. However, a false claim petition has been filed now, to seek compensation.

Likewise, the insurance company, in its reply, had also raised various legal objections and besides the same, had also taken the plea that no accident had taken place in the manner as pleaded in the claim petition.

CW-2 Surjit Kaur, who was accompanying deceased Paramjit Kaur, at the relevant time, has deposed about the rashness and negligence, on the part of the driver of the offending bus in question and has also deposed that while Paramjit Kaur was in the process of alighting from the bus, respondent No.1, rashly and negligently and without caring for her, speeded up the bus and then Paramjit Kaur fell on the ground and came under the wheel of the bus and died instantaneously. Even, claimant No.1-Naib Singh, who is husband of the deceased, in his affidavit Ex.CW1/A, has stated in consonance with the pleaded case, about imputation of rashness and negligence, on the part of respondent No.1, who caused the accident.

Very true, as now submitted by learned counsel for the insurance company that no FIR, in the present case was got lodged and it was only the DDR, which is Ex.C1, which was recorded, regarding the death of wife of Naib Singh. It is submitted that no negligence is spelt out, on the part of respondent No.1-driver, in the said DDR. However, Naib Singh is not witness to the accident. In view of the material, coming on

record, learned Tribunal had rightly not placed any reliance upon the DDR. Even though, FIR has not been registered in the said case, but however, it matters, not much, as registration of FIR is not a *sine qua non*, for filing the petition for claim, arising out of the motor vehicular accident.

So far as, DDR Ex.C1 is concerned, it has been appropriately discarded by learned Tribunal. This DDR was got recorded, at the instance of Naib Singh-claimant No.1, who is husband of the deceased Paramjit Kaur. Undisputedly, he was not an eye witness to the accident in question. Therefore, the version, so set up in the DDR, about there to be not fault on the part of the driver of the bus, in causing the accident, as such, cannot be taken into consideration. Even though, the DDR, as such, has been got recorded, at first instance, but, it does not give any strength to the submission, made at the instance of insurance company. The fact remains that Surjit Kaur was accompanying deceased Paramjit Kaur, at the relevant time and she, in her affidavit Ex.CW2/A, has categorically deposed about rashness and negligence, on the part of driver of the offending bus. Even though, now it is submitted, at the behest of insurance company that driver of the offending bus, was not at fault, but however, the aforesaid submission, is not tenable. From the evidence brought on record, it stands amply established that Paramjit Kaur was in the process of alighting down from the bus, when the driver speeded up the bus and the accident occurred. This manner of putting the bus in motion, while a passenger was in the process of alighting down from the bus, speaks volumes about the rashness and negligence, on the part of the driver of the bus. It is incumbent upon the driver of the bus to take proper care, caution and ensure about the safe

alighting down of the occupants of the bus. However, the driver of the bus, in question, gave a amiss to this duty cast upon him. Once the occupant of the bus was in the process of alighting down from the bus, the bus put in motion, resulted into the slipping of the passenger, as a result whereof, the occupant, came under the wheel of the bus and died instantaneously. This manner of taking place of the accident, in itself, establish about the rashness and negligence, on the part of the driver of the offending bus. In the light of the same, once this act, on the part of the driver, as such is evident and stands amply established, from the evidence, brought on record, the recitals of the DDR, as such, are of no help to the insurance company, to dispute the imputation of rashness and negligence, on the part of respondent No.1-driver of the offending bus.

Besides the aforesaid submission, qua manner of taking place of the accident, the computation of Award amount has also been challenged by the insurance company. Compensation to the extent of Rs.16,52,000/- has been granted, on account of death of Paramjit Kaur. Even though, in the claim petition, it is asserted about the deceased to be indulging in sale of milk, but however, no satisfactory evidence, qua the said avocation, as such, has been brought on record. However, the fact remains that deceased was married women, having husband and two minor children, who are claimants No.2 and 3 and they are handicapped to the extent of 75% and 100%. Deceased was taking care of the husband and minor children.

Any compensation awarded by a Court, ought to be just, reasonable and consequently, must undoubtedly be guided by principles of fairness, equity, and good conscience. There are two categories of

situations, which the Court, usually encounter to make assessment of the compensation, to be granted, to the victims of the motor vehicular accident cases. One such category is of the non-earning victims, that the Courts are called upon to calculate the compensation for the homemakers. The grant of compensation for homemakers, on pecuniary basis, has been considered by the Courts, time and again.

In ***Lata Wadhwa vs. State of Bihar, 2001(8) SCC 197***, following observation has been made:-

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs 12,000 per annum in cases of some and Rs 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs 3000 per month and Rs 36,000 per annum...”

In ***Arun Kumar Aggarwal vs. National Insurance Company Ltd., 2010(9) SCC 218***, while considering the case of grant of compensation, on account of death of a housewife, due to the motor vehicle accident, it was observed, as herein given:-

“26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her

husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependents cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

In *Kirti and another v/s Oriental Insurance Company Ltd.*,

2021(2) SCC 166, the Hon'ble Supreme Court, while considering the case of death of a homemaker, has observed, as herein given:-

"26. The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and

*transplanting activities in the field, apart from tending cattle [See Arun Kumar Agrawal (supra); **National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan, 2009 SCC OnLine Mad 828**]. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.*

Therein, it was further held as under:-

32. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.

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35. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

*36. Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [**National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413**].*

Therein, it was also held that effects of inflation would equally be applied as to the case of assessment of notional income of the homemaker and on this account, it was further held that the future prospects,

also are required to be taken into consideration.

Thus, summing up, general observations were made regarding the issue of calculation of notional income for homemakers and grant of future prospects, with respect to them, for the purposes of grant of compensation, which was summarized, as follows:-

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

In this backdrop, advertng to the case in hand. It is pertinent to mention that two minor children of the deceased were 75% and 100% handicapped. Claimant No.1-Naib Singh, in his affidavit, has stated about this physical disability suffered by his children and deceased used to take care of the aforesaid children. Besides the same, it is pertinent to mention that the service of mother/wife is available 24 hours. Her duties are never

fixed. Courts have recognized the contribution made by the wife/mother to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not only work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker, has to be necessarily kept in view, while calculating the loss, in the eventuality of death of the homemaker. In this case, the deceased was 35 years old, at the time of accident. She had two handicapped minor children and it is quite obvious that taking care of two handicapped children must have required the deceased to have extra strength to take care of the aforesaid children. There cannot be substitute for mother's love and affection, with which the children, must be looked after by the deceased. Considering the same, the value of services rendered by the deceased, in this present case, keeping in view the fact of children being handicapped, ought to be more than, what has been taken by the Tribunal. Thus, considering the aforesaid circumstances, Rs.8,300/- per month, is the appropriate value of services rendered by the deceased to the claimants.

Considering the number of dependents, $1/3^{\text{rd}}$ is to be deducted on account of personal expenses and residue comes to be Rs.5,533/-. Besides the same, an addition of 40% is to be made, on account of future prospects, which comes to be Rs.2,213/- and thus, total whereof is worked upon as $\text{Rs.}5533 + 2213 = \text{Rs.}7,746/-$ and annual income comes to be $\text{Rs.}7746 \times 12 = \text{Rs.}92,952/-$. By application of appropriate multiplier, which is '16' as held in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, **2009(3) RCR (Civil) 77**, the loss of dependency is assessed as $\text{Rs.}92,952 \times 16 = \text{Rs.}14,87,232/-$.

In view of the guidelines laid down in *Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130* and *Pranay Sethi's case (supra)*, all the claimants, are entitled to compensation for 'loss of consortium', to the extent of Rs.44,000/- each. Even though, learned Tribunal had granted compensation to the extent of Rs.1 lakh to claimant No.1, on account of loss of consortium and Rs.2 lakh each, to claimants No.2 and 3, on the count of 'love and affection', but however, it is pertinent to make reference to the decision rendered by the Hon'ble Supreme Court in *Magma's case (supra)*, wherein, it is laid down that 'loss of love and affection is comprehended in loss of consortium'. Hence, there is no justification to award compensation towards 'loss of love and affection', as a separate head, which view was further endorsed in *The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*.

Besides the same, as per *Pranay Sethi's case (supra)*, the claimants are entitled to Rs.15,000/- for the funeral expenses as well as Rs.15,000/- for the loss of estate, which requires 10% enhancement, after a period of three years, which has since passed by. As such, the claimants are entitled to compensation, Rs.16,500/- on the count of 'funeral expenses' and Rs.16,500/- for 'loss of estate'.

Thus, loss of dependency comes to be Rs.14,87,232/-, loss of consortium comes to be Rs.1,32,000/- (Rs.44,000/- to each of the appellant), Rs.16,500/- as funeral expenses and Rs.16,500/-, as loss of estate.

Therefore, the total comes to be **Rs.16,52,232/-**.

Thus, the compensation amount of **Rs.16,52,000/-**, so granted by learned Tribunal, is the most appropriate one, which calls for no interference. The remaining terms of the Award shall remain the same.

With the aforesaid modification in the computation of the compensation, the present appeal stands dismissed.

March 28, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No