

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1846 of 2015 (O&M)
Date of decision: 28.7.2015

Jagwinder Kaur and another

.. Petitioners

v.

Narang Singh Gill and others

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Satinder Khanna, Advocate for the petitioners.

Mr. R. S. Sihota, Senior Advocate with
Mr. B. R. Rana, Advocate for the respondents.

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Rajesh Bindal J.

Challenge in the present petition is to the order dated 4.3.2015, passed by the learned court below, whereby the application filed by the petitioners seeking permission to amend the plaint claiming more amount of maintenance considering increase in the cost of living, was dismissed.

Learned counsel for the petitioners submitted that he may be permitted to withdraw the application for amendment of the plaint as the same was filed under mistaken advice, as in spite of the fact that lesser amount of compensation had been mentioned in the petition, the court could grant even higher compensation. Reference was made to Rakhaben Yogendrakumar Maniar v. State of Gujarat, 2005(1) RCR (Criminal) 196 (Guj.); Radhika Narang and others v. Karun Raj Narang and another, 2009 (2) RCR (Civil) 317 (Del.) and Yash Pal v. Kaushal Rani and another, (2013) 5 Law Herald 4178 (P&H).

On the other hand, learned counsel for the respondents could not dispute the law laid down by Hon'ble the Supreme Court and this Court holding that there is no bar as such in awarding the amount more than what

has been claimed. However, he submitted that once the application for amendment was filed and the same was dismissed, this court should not permit the petitioners to withdraw the same at this stage.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, the petitioners filed a suit, *inter-alia*, for maintenance under the Hindu Adoptions and Maintenance Act, 1956 (for short, 'the Act') claiming maintenance to the tune of ₹ 5,000/- per month. The suit was filed way back in the year 2009. As the cost of living increased, the application was filed seeking amendment of the plaint claiming maintenance @ ₹ 10,000/- per month instead of ₹ 5,000/- per month. The application having been rejected, the plaintiffs are before this court.

The primary reason assigned by the court below for rejection of the application was that no amendment could be allowed after the trial had commenced. Be that as it may, the reason for the petitioners seek to withdraw the application filed for seeking amendment of the plaint for seeking higher compensation is on account of the fact that the same was filed under a mistaken advice and there being no bar for grant of compensation higher than what had been claimed as it is for the court to see reasonableness in the amount of compensation.

In Ibrahim v. Raju and others, 2011(4) RCR (Civil) 863 (SC), the issue under consideration was regarding grant of compensation under the Motor Vehicles Act, 1988. As advised, the claim petition was filed seeking compensation of ₹ 3,00,000/-. Still Hon'ble the Supreme Court awarded compensation of ₹ 6,00,000/- opining that it is the function of the Court/Tribunal to award just compensation on the basis of evidence produced on record, as on account of financial incapacity, the claimant therein could not avail the services of a competent lawyer to make claim for adequate compensation. Relevant para thereof is extracted below:

“21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due

to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in ***Nagappa v. Gurudayal Singh, 2003(1) R.C.R. (Civil) 258 SC: (2003) 2 SCC 274***. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in ***Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire, 1987 ACJ 311 (Bombay)***, Orissa High Court in ***Mulla Mod. Abdul Wahid v. Abdul Rahim, 1994 ACJ 348 (Orissa)*** and Punjab and Haryana High Court in ***Devki Nandan Bangur v. State of Haryana, 1995 ACJ 1288 (P&H)*** and observed:

“For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award “just” compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.”

In Rakhaben Yogendrakumar Maniar's case (supra), Gujarat High Court opined that the wife having not indicated any particular amount of maintenance claimed in the application, no amendment in the petition is

required as it is always open to the court to grant adequate amount of maintenance determined on the basis of parameters laid down.

Reference may also be made to the judgment of Hon'ble the Supreme Court in Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210.

In Yash Pal's case (supra), this court dealt with an issue regarding award of maintenance under the Act and opined that the court can always award compensation more than what has been claimed in a suit as the ultimate dispensation of justice cannot be circumvented by the technicalities and the endeavour of the court is to do substantial justice.

In view of the aforesaid enunciation of law, in my opinion, the prayer of the petitioners seeking permission to withdraw the application for amendment of the plaint seeking maintenance can very well be allowed, as it is always for the court to determine and award compensation to a claimant on the basis of material placed on record in the light of parameters settled for determination thereof. Ordered accordingly.

The petition stands disposed of.

(Rajesh Bindal)
Judge

28.7.2015
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(Refer to Reporter)