IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3453 of 2009 (O&M)
Date of decision : December 11, 2018

Chander Parbha Kaushal and others .....Appellants

Versus

Richhpal Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pankaj Gupta, Advocate
for the appellants.

Mr. Dheeraj Narula, Advocate
for respondents No. 1 and 2.

Ms. Shamsher Kaur, Advocate
for respondent No. 3.

***

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') on account of death of Anil Kumar Kaushal vide award dated 19.03.2009.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and children of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Anil Kumar Kaushal on 24.01.2007 in a motor vehicle accident which took place on 22.01.2007, caused due to driving of the offending vehicle Tata 608 bearing registration No. HR-34-1868 by respondent No.1 in a rash and negligent manner. It was averred that Anil Kumar alongwith his driver Mahinder Singh started from Head Office, Panchkula in a Government Marshal Jeep. When they reached near Hisar bye-pass near

Barwala Octroi at about 9.30 p.m., offending vehicle Tata 608 bearing registration No. HR-34-1868, came from the side of Delhi and struck against the Marshal jeep in which Anil Kumar was riding. As a result thereof, Anil Kumar fell on the ground and received serious, multiple and grievous injuries. He was shifted to General Hospital, Hisar. He was then shifted to Metro Hospital, Hisar and thereafter to Sri Ganga Ram Hospital, New Delhi where he ultimately succumbed to his injuries on 24.01.2007. The deceased was claimed to be working as General Manager, Vita Milk Plant Jind under the aegis of Haryana Dairy Development Coperative Federation. He was due to retire on 31.08.2009.

Learned Tribunal on consideration of the facts, circumstances and evidence on record held that the accident in question took place on 22.01.2007 due to rash and negligent driving of the offending vehicle Tata 608 bearing registration No. HR-34-1868 by respondent No. 1. Learned Tribunal awarded a sum of ₹25,000/- towards loss of consortium, funeral expenses etc. to the claimants while observing that widow of Anil Kumar Kaushal is not dependent upon her husband as she herself was working and earning salary. Appellant No. 2 i.e. married son of the deceased was observed to be an Engineer by Profession, therefore, not dependant upon the deceased. In this situation, it was held that the claimants are not entitled to anything more than a sum of ₹25,000/-.

Aggrieved thereof, claimants have filed this appeal.

Learned counsel for the appellants vehemently argues that the learned Tribunal has grossly erred in awarding a mere sum of ₹25,000/- as compensation. It cannot be said that the claimant – widow merely on account of her working and earning an income of her own was not dependent upon her husband. Moreover, learned Tribunal has ignored the fact that the appellant No. 3 i.e. daughter of the deceased was pursuing her MBA at Gurgaon at the time of the accident and was clearly dependant upon her father. It is, thus, prayed that this appeal be allowed.

Learned counsel for respondents pray for upholding of the impugned award and submit that the deceased was an employee of State of Haryana, therefore, entitled to full salary of the deceased under the Haryana Compassionate Dependant Rules, 2006. There is, however, no denial of the fact that appellant No. 3 – daughter of Anil Kumar (deceased) was a student of MBA at Gurgaon at the relevant time. It is submitted that in any case the amount of salary which the claimant – widow would have received from the State of Haryana has to be deducted from the amount of compensation, in case, the appellants are found entitled for the same.

Affidavit dated 01.12.2008 of Smt. Chander Parbha Kaushal filed in Court is taken on record subject to just exceptions. It is stated therein that a sum of ₹12,72,322.95p has been received by appellant No. 1 for the period of January 2007 (7 days) till August 2009 as salary of her deceased husband.

I have heard learned counsel for the parties and have gone through the available file.

There is no dispute that Anil Kumar lost his life in a motor vehicle accident, which took place on 22.01.2007 caused due to the rash and negligent driving of Tata 608 bearing registration No. HR-34-1868 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. There is further no dispute that the deceased, aged 55 years 5 months at the time of the accident was working as General Manager, Vita Milk Plant Jind at the time of his death. He was to retire on 31.08.2009.

It is a matter of record that at the time of his death, the deceased was drawing a monthly salary of ₹37,863.20. Learned Tribunal has indeed erred in awarding only a sum of ₹25,000/- on account of loss of consortium and funeral expenses etc. to the claimants by observing that the widow cannot be held dependant upon her husband. It is to be noticed that though the wife may be earning on her own, it is not that she would not be partaking of the income of her husband in any situation, though son of the deceased who was married and an Engineer by profession may be treated to be independent. Respondent No. 3 - daughter of the deceased was admittedly unmarried and pursuing her studies at the time of the accident, therefore, claimants i.e. appellants No. 1 and 3 are entitled to loss of dependancy. Needless to say the amount received by appellant No. 1 under the Haryana Compassionate Dependant Rules, 2006 i.e. Rs. 12,72,322.95 has to be deducted from the total compensation. Salary of the deceased as mentioned above was ₹37,863.20 per month i.e. ₹4,54,356/- per annum. A sum of ₹15,000/- per annum is, however, to be deducted from the income of the appellant on account of income tax. Thus, total income of the appellant after deducting tax is ₹4,39,356/- per annum (4,54,356-15,000). In terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 15% (₹65,903/-) has to be afforded, as the deceased was 55 years old at the time of accident, which takes income of the deceased to ₹5,05,259/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of $1/3^{rd}$ is to be applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹3,36,839/-(505259-168420). Applying a multiplier of 11, dependancy of the claimants is, therefore, assessed as ₹37,05,229/- (₹3,36,839x11). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), appellant No. 2 and 3 are entitled to ₹40,000/- each on account of loss of parental consortium.

Claimants are, thus, entitled to compensation of ₹38,55,229/- detailed as under:-

Loss of dependency (₹3,36,839x11)	₹37,05,229/-
Loss of consortium	₹40,000/-
Loss of parental consortium (40,000 x 2)	₹80,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹38,55,229/-

Sum of ₹12,72,323/- received by appellant No. 1 as salary of the deceased from the date of his death till retirement has to be deducted from the amount of compensation. Claimants are thus, entitled to ₹25,82,906/- (38,55,229-12,72,323).

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Appellant No. 3 is entitled to a sum of ₹40,000/- and one third of ₹30,000/- (compensation for loss of estate and funeral expenses) only.

Appellant No. 1, widow of the deceased is held entitled to 75% of the rest of compensation and appellant No. 3 to 25% thereof.

Present appeal is accordingly disposed of.

(Lisa Gill)
Judge

December 11, 2018
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No