IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2782-2005 (O&M)

Sudesh and others

...Appellants

VERSUS

Pasi Shree Ram and others

...Respondents

(ii) FAO-2783-2005 (O&M)

Rajbala and others

...Appellants

VERSUS

Pasi Shree Ram and others

...Respondents

Date of Decision: December 22, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.S.N.Pillania, Advocate
for the appellants.

Mr.Gopal Mittal, Advocate
for respondent No.3.

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ARCHANA PURI, J.

These are two appeals, filed to challenge the Award dated 04.01.2005 passed by learned Motor Accident Claims Tribunal, vide which, compensation has been granted, on account of death of Satish Kumar and Jaipal, in a motor vehicular accident.

FAO-2782-2005 has been filed by appellants-claimants Sudesh, widow of Satish Kumar, her minor children and mother of deceased Satish

Kumar, whereas, FAO-2783-2005 has been filed by Rajbala, widow of Jaipal, her minor children and father of deceased Jaipal.

Initially, two separate claim petitions were filed for seeking compensation, qua death of Satish Kumar and Jaipal, in a motor vehicular accident, which took place on 22.11.2002, while both the deceased were the occupants of motorcycle bearing registration No.HR-31B-6678.

Both the claim petitions were decided together. On appraisal of the evidence brought on record, vide impugned Award, compensation was granted to the extent of Rs.6,77,500/-, qua the death of Satish Kumar, whereas, compensation to the extent of Rs.3,04,000/- was granted, qua death of Jaipal.

Being dissatisfied with the extent of compensation, so granted, appellants-claimants have filed the respective appeals, thereby, seeking enhancement of the compensation.

As per the version of the appellants-claimants, on 22.11.2002, Satish Kumar along with Jaipal was going to Narwana city from their village Dumerkha-Khurd, to purchase household material. The motorcycle was driven by Satish Kumar and Jaipal was the pillion rider. When they reached on Jind-Narwana Road, in front of Deepak Milk Project, then, a tanker bearing registration No.GJ-6V-4557, came from Narwana side, being driven by respondent No.1, in a rash and negligent manner on wrong side, which struck against their motorcycle, as a result whereof, Satish Kumar and Jaipal, had sustained grievous injuries. The accident was witnessed by Gulab Singh and Anil Kumar, who were following the ill-fated motorcycle. While being taken to Civil Hospital, Narwana, Jaipal succumbed to his injuries. Since, condition of Satish Kumar was also critical, he was referred to PGIMS, Rohtak, but he also succumbed to his injuries, so sustained in the accident in question. It is specific claim of the appellant-claimants that accident in question had taken place, due to respondent No.1 i.e. Pasi Shree Ram, while he was driving the tanker bearing registration No.GJ-V-4557, in rash and negligent manner. However, respondents No.1 and 2 (driver and owner) had not made appearance and were proceeded against ex-parte. Respondent No.3-insurance company was the only contesting respondent before learned Tribunal.

To so substantiate the imputation of rashness and negligence, on the part of respondent No.1, appellants-claimants had examined PW-1 Gulab Singh, who was an eye witness. He deposed, in consonance with the version of the appellants and also imputed rashness and negligence, on the part of respondent No.1. PW-2 Head Constable Gulab Singh had proved the FIR Ex.P1. Even, both the widows of the deceased Satish Kumar and Jaipal had stepped into witness box as PW-3 and PW-5 respectively, and deposed about death of their respective husbands, in the accident in question.

At this juncture, it is also pertinent to mention that respondents No.1 and 2, in the capacity of being driver and owner, have not pursued the claim petitions and were proceeded against ex-parte. Moreover, the driver, owner and insurer of the offending vehicle, have also not filed any appeal, to challenge the finding with regard to the rashness and negligence imputed upon respondent No.1. As such, the finding, so arrived at by learned Tribunal, vis-a-vis, imputation of rashness and negligence, on the part of respondent No.1, has since attained finality.

In this backdrop, now Sudesh, widow of deceased Satish Kumar and Rajbala, widow of Jaipal, as well as respective children and mother and father of deceased Satish Kumar and Jaipal, respectively, have filed the present appeals, for seeking enhancement of the compensation.

At the behest of appellants of FAO-2782-2005, it has been submitted by learned counsel that learned Tribunal had erroneously assessed the income of the deceased Satish Kumar, to be only Rs.3,350/- per month. It is submitted that he was working as Lab Attendant in Government Senior Secondary School, Narwana and was earning Rs.5,500/- per month. Besides the same, he was also following agricultural pursuit and used to earn another Rs.5,000/-. As such, it is submitted that amount of earnings of the deceased, ought to be taken as Rs.10,000/- per month. However, learned Tribunal has wrongly excluded the amount of allowance, payable to the deceased and has also not taken into consideration avocation of the deceased as an agriculturalist. It is submitted that earnings are to be worked upon, the salary minus taxable income (if so liable). It is further submitted that earnings of the deceased, did not fell within the taxable limits. As such, gross salary had to be taken into consideration, as per Ex.P6, which is salary detail. Further, it is submitted that no benefit qua 'future prospects' has been granted by learned Tribunal. Also, on the count of 'loss of consortium' as well as 'funeral expenses', the amount of compensation, so granted, is on lesser side. Even, the wrong multiplier has been applied. Considering the number of dependents upon the deceased, the deduction to be made towards personal and living expenses, ought to be $1/4^{th}$, instead of working on the unit of 2 out of 6 units.

Likewise, qua the death of Jaipal, it is submitted that income of deceased Jaipal has been erroneously assessed as Rs.2,200/- per month. He was indulging in dairy farming and was running a shop and he was also indulging in agricultural work and therefore, his earnings were Rs.10,000/- per month. Also, qua Jaipal, it is submitted that looking at his age, even no benefit of 'future prospects' has been granted. Furthermore, appropriate multiplier, has not been applied. Further, it is submitted that amount of compensation granted on the count of 'cremation' and 'loss of consortium', is also on lesser side.

Thus, learned counsel for the appellants submit that the compensation so granted, qua death of Satish Kumar and Jaipal, requires extensive enhancement.

On the contrary, learned counsel for the insurance company has submitted that salary part has been rightly so concluded, which does not include allowances and therefore, the extent of salary has been rightly taken by learned Tribunal. Even, the appropriate multiplier has been applied and the compensation, so worked upon by learned Tribunal, does not call for any interference. However, at the most, it is submitted that enhancement can be there, under the conventional heads.

However, keeping in the material adduced in evidence, the compensation, so granted qua death of Satish Kumar and Jaipal needs extensive enhancement.

Firstly, coming to the compensation, to be worked upon, vis-a-vis, death of Satish Kumar. From the evidence adduced, it stands established that deceased Satish Kumar was working as Lab Attendant in the Government Senior Secondary School, Narwana. Ex.P6 is the salary certificate, which clearly reveals about his basic pay to be R.3,350/-, which has been, so taken by learned Tribunal. However, other heads, qua total salary, which is to the extent of Rs.5,277/-, has not been taken into consideration. Learned Tribunal had excluded the other allowances from the aforesaid amount of Rs.5,277/- and after deducting the amount of allowances, had worked upon the income as Rs.3,550/- per month. However, this is palpably wrong.

In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, it has been categorically held that the gross income of the deceased has to be taken into consideration. Except the deduction on account of income tax, no deduction is to be made from the salary, qua other allowances. The income of the deceased is actual salary minus the tax component. In the case in hand, the salary of the deceased is Rs.5,277/- per month, which comes to be Rs.63,324/- per annum. In the year 2002, the tax slab was 'Nil' upto Rs.50,000/-. Therefore, the annual income of the deceased, only beyond Rs.50,000/-, comes under the tax bracket.

From the evidence on record, it is evident that date of birth of deceased Satish Kumar was 11.11.1972, which has been so deposed by PW-4 Satpal Singh, Clerk, of employer School of the deceased and the date of birth of the deceased, is so stated in Ex.P2. Considering it to be so, the age of the deceased, at the time of accident was 30 years.

As per ***Pranay Sethi's case (supra)***, keeping in view the age and the avocation so followed by the deceased, addition of 50% has to be made as future prospects and thus, the income comes to be Rs.5277+2638 (50%)=Rs.7,915/-.

As the number of dependents upon the deceased is four, therefore, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction, ought to be 1/4th. Taking it to be so, the loss of dependency is worked upon as Rs.7915-1979(1/4th) =Rs.5936/-. Thus, the annual loss of dependency comes to be Rs.71,232/-.

As stated aforesaid, in the year 2002, the tax slab was 'Nil' upto Rs.50,000/-, but however, for the amount of Rs.50,000-Rs.60,000, it was 10% of the amount and for the amount of Rs.60,000-Rs.1,50,000, the tax to be deducted is to the extent of 20% of the amount. Thus, the taxable income in the case of deceased, at the relevant time was Rs.21,232/-. Taking it to be so, the tax payable comes to be Rs.3,246/-. However, there is no material coming on record, about the extent of savings, so made and in the absence of the same, this amount to be taxable, as such, is not evident and therefore, for all intents and purposes, the salary of the deceased Satish Kumar, including future prospects, as such, has to be taken into consideration. Taking it to be so, as already worked upon, the annual income of the deceased Satish Kumar comes to be Rs.71,232/-.

Deceased Satish Kumar is established to be 30 years old. In the given circumstances, the multiplier of '15', so applied by learned Tribunal, to work upon the compensation, is not appropriate and as per ***Sarla Verma's case (supra)***, the multiplier of '17' is to be applied. By applying this multiplier, the compensation, on the count of 'loss of dependency', comes to be Rs.71,232x17=Rs.12,10,944/-.

Besides the aforesaid, it is pertinent to mention that in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and ***United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410***, it has been laid down by the Hon'ble Supreme Court that consortium is not limited to '**spousal consortium**' and it also includes '**parental consortium**' and '**filial consortium**'. It was held that apart from spousal consortium, parental and filial consortium is also payable. Endorsing this view, in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***, the conclusion given in the impugned judgment of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

In ***Pranay Sethi's case (supra)***, the extent of consortium, which should be paid, is stated to be Rs.40,000/-, for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-. It was further held in above cited case that the aforesaid amount should be enhanced by 10% after every three years. As the said judgment is dated 31.10.2017, so there has to be enhancement of 10% in each of these conventional heads, which comes to be Rs.44,000/- as loss of consortium, which is to be paid to each of the appellants-claimants, Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses.

Considering the same, now the compensation payable to appellants-claimants in FAO-2782-2005, is re-appraised as herein given:-

Loss of dependency	**:**	**Rs.12,10,944/-**

Loss of consortium (Rs.44,000x4)	**:**	**Rs.1,76,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Loss of Estate	**:**	**Rs.16,500/-**
Total	**:**	**Rs.14,19,944/-**

Now, coming to the compensation to be worked upon vis-a-vis, death of Jaipal. Even though, it is the claim of the appellants-claimants Rajbala and others, about deceased Jaipal to be running a shop and indulging in agricultural work and also indulging in dairy farming, but however, no evidence of the said avocation, as such, had been brought on record. Considering the same, learned Tribunal had rightly considered deceased Jaipal to be working as labourer, but however, his earnings, so taken by learned Tribunal, are on lesser side. Now, the earnings are taken to be Rs.3,000/- per month.

Deceased Jaipal was 35 years old, at the time of accident, as deposed by PW-5 Rajbala. As per ***Pranay Sethi's case (supra)***, keeping in view the age and the avocation so followed by the deceased, addition of 40% has to be made as future prospects and thus, the income comes to be Rs.3000+1200(40%)=Rs.4,200/-. As the number of dependents upon the deceased is five, therefore, as per ***Sarla Verma's case (supra)***, the deduction, ought to be 1/4th. Taking it to be so, the loss of dependency is worked upon as Rs.4200-1050(1/4th)=Rs.3150/-. Thus, the annual loss of dependency comes to be Rs.37,800/-.

It is further to pertinent to mention that the multiplier of '15', as so applied by learned Tribunal is on lower side. Keeping in view the age of deceased Jaipal, as per ***Sarla Verma's case (supra)***, the multiplier of '16' is required to be applied. By applying this multiplier, the compensation, on the count of 'loss of dependency', comes to be Rs.37,800x16=Rs.6,04,800/-.

As observed in the earlier portion of the judgment, qua death of deceased Jaipal, the appellants-claimants, in the capacity of being widow, children and father, are entitled to compensation on the count of 'loss of consortium', to the extent of Rs.44,000/- each, Rs.16,500 as 'funeral expenses' and Rs.16,500, on the count of 'loss of estate'.

Considering the same, now the compensation payable to appellants-claimants in FAO-2783-2005, is re-appraised as herein given:-

Loss of dependency	**:**	**Rs.6,04,800/-**
Loss of consortium (Rs.44,000x5)	**:**	**Rs.2,20,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Loss of Estate	**:**	**Rs.16,500/-**
Total	**:**	**Rs.8,57,800/-**

From the compensation of **Rs.14,19,944/-**, so now worked upon in FAO-2782-2005, Rs.3 lakh each be disbursed to appellants-Sumit and Avnika (son and daughter of deceased) and Rs.2 lakh to appellant-Smt.Chandro Devi (mother of the deceased) and remaining amount of Rs.6,19,944/-, be disbursed to appellant-Smt.Sudesh (widow of deceased).

Likewise, from the compensation of **Rs.8,57,800/-**, so now worked upon in FAO-2783-2005, Rs.1 lakh each be disbursed to appellants-Master Sonu, Miss Sonia and Monu, Moman (children and father of the deceased) and remaining amount of Rs.4,57,800/-, be disbursed to appellant-Smt.Rajbala (widow of deceased).

However, it is pertinent to mention that the amount of compensation already paid, shall be deducted from the amounts, so now apportioned. For the enhanced amount of the compensation, the appellants-claimants, in both the appeals, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till its realization.

The impugned Award dated 04.01.2005 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain same.

With the above observations, both the appeals stand allowed.

December 22, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**