IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-10071-2014 (O&M)
Date of Decision: December 15, 2022

Kela Devi and another

....Appellants

Versus

Shamsher Singh and others

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr.Kapish Singla, Advocate for
Mr.Ashit Malik, Advocate
for the appellants.

Mr.Rajesh Bansal, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J

Challenge in the present appeal is to the Award dated 22.08.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation has been granted to the appellants-claimants, on account of death of Jeevan Kumar, in a motor vehicular accident.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal, had granted compensation to the extent of Rs.4,30,000/- to the appellants-claimants, who are parents of the deceased.

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants have filed the present appeal.

As per the version of the appellants-claimants, on 07.08.2013, Jeevan Kumar along with Anil Kumar, was going from Hotel Kuber, Murthal to his village Jodhan Kalan, on their respective motorcycles. Jeevan Kumar was going ahead of Anil Kumar. At about 9.00 a.m., an

Eicher Canter bearing registration No.HR-45B-0816, being driven by respondent No.1-Shamsher Singh, in a rash and negligent manner, came from behind and struck the motorcycle of Jeevan Kumar, as a result whereof, Jeevan Kumar sustained multiple injuries on his person. He was taken to a nearby clinic and was referred to Trauma Centre, Delhi and from Trauma Centre, Delhi, he was taken to Max Hospital, for better treatment, where he succumbed to his injuries on 08.08.2013. FIR No.305 dated 07.08.2013 under Sections 279, 337 and 304-A IPC, was got registered, at the instance of Anil Kumar.

In reply, respondents No.1 and 2, who are driver and owner of the offending vehicle bearing registration No.HR-45B-0816, had denied about taking place of the accident and also alleged that false FIR has been registered against them. Likewise, even respondent No.3-insurance company, had also denied the factum of accident and involvement of alleged Canter in the accident, besides, taking various other objections.

So far as, the fact of accident and imputation of rashness and negligence, on the part of respondent No.1-Shamsher Singh, is concerned, the appellants-claimants have examined Anil Kumar as PW-2, who was accompanying the deceased, at the relevant time, while on other motorcycle, and as such, had witnessed the accident. He has deposed about the fact of accident and also imputed rashness and negligence, on the part of respondent No.1, while driving the offending vehicle, as a result whereof, Jeevan Kumar, had sustained injuries, which proved fatal. He further deposed about FIR No.305 dated 07.08.2013, having got registered, on his statement. PW-1 Kela Devi, mother of the deceased, has also deposed about death of her son, in a motor vehicular accident. From the report under Section 173 Cr.P.C. Ex.P4 and copy of the charge-sheet Ex.P5, it is evident that respondent No.1-Shamsher Singh, is facing a criminal trial, vis-a-vis, the accident in question.

Even though, respondents have denied the accident, in toto, but however, to so substantiate this plea of denial, respondent No.1, who was the best person to so depose, has not stepped into witness box. In fact, evidence so produced, at the instance of the appellants-claimants, stood unrebutted. Even, the driver, owner as well as insurance company, have not filed any appeal to challenge the findings of rashness and negligence, on the part of respondent No.1-Shamsher Singh. Consequently, the findings so recorded by learned Tribunal, have since attained finality.

In this backdrop, the moot question is with regard to the extent of compensation, payable to the appellants-claimants. It is assiduously submitted by learned counsel for the appellants that deceased Jeevan Kumar was 25 years old, at the time of accident and he was unmarried. He was working at Hotel Kuber and was earning Rs.15,000/- per month. As such, learned Tribunal has paid meagre amount of compensation, which requires extensive enhancement.

On the contrary, learned counsel for the insurance company submit that no satisfactory evidence, with regard to the avocation, so followed, by the deceased, has been led on record and even the extent of earnings, as such, does not stand proved. Therefore, learned Tribunal has appraised the evidence, brought on record, in correct perspective and has granted 'just' compensation to the appellants. As such, a prayer has been made for dismissal of the appeal.

From the material adduced in evidence, it stands established that the deceased was 25 years old, at the time of accident and his marital status of being unmarried, also stands established. Even though, it is the claim of the appellants that deceased was working in Hotel Kuber and earning Rs.15,000/- per month, but however, no such evidence, has come on record. However, the earnings of the deceased have been assessed by the Tribunal, to be Rs.5,000/- per month, which is definitely, on the lower side.

Considering the minimum wages, as prevalent, at the relevant time, in the fitness of the circumstances, the earnings of the deceased, are taken to be Rs.6,000/- per month. Further, it requires 40% addition, on the count of 'future prospects', as per guidelines laid down in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** and by doing so, the total earnings comes to be Rs.8,400/-. Since, the deceased was unmarried, at the relevant time, therefore, there has to be deduction to be extent of 50%, on account of personal and living expenses. As such, the monthly contribution of the deceased, towards his parents, comes to be Rs.4,200/- and thus, the annual earnings comes to be Rs.4200x12=Rs.50,400/-.

Learned Tribunal had considered the age of the mother of the deceased, while working upon the appropriate multiplier to be applied, while computing the compensation. However, in this regard, reference is made to the decision rendered by the Hon'ble Supreme Court in ***Giasi Ram and Anr. vs. ICICI Lombard General Insurance Co. Ltd. & Ors., 2023(1) RCR (Civil) 7***, wherein, it has been held that the age of the deceased and not such of dependents, in case of death of bachelor, has to be made basis for multiplier. Considering the same, it is the age of the deceased, which has to be taken into consideration. The deceased was 25 years old, at the time of accident. Considering this to be age of the deceased, '18' is the appropriate multiplier, as per guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***. Thus, the loss of dependency is worked upon as Rs.50,400x18=Rs.9,07,200/-.

At this juncture, it is pertinent to mention that learned Tribunal had granted compensation to appellant-claimant No.1 only, who is mother of the deceased. It has been concluded by learned Tribunal that appellant-claimant No.2, who is the father, was not dependent upon the deceased. However, the aforesaid conclusion is erroneous.

The word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service. It does not mean financial dependency only. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Reverting to the case in hand, it is pertinent to mention that deceased was 25 years old, young unmarried boy, at the time of accident. Even though, assuming that appellant No.2, being father of the deceased, may not be dependent financially, upon the deceased, but however, at this age, father is definitely emotionally and psychologically dependent upon his young child and also he has service dependency. In the given circumstances, appellant No.2, ought not to be deprived of the compensation, to be so worked upon. As such, the finding, so got recorded by learned Tribunal, thereby depriving appellant No.2 of the compensation, to be granted, is hereby set aside and appellant No.2 along with appellant No.1, who is mother of the deceased, is entitled to the compensation, to be so worked upon, vis-a-vis, death of their young son.

Besides the aforesaid, amounts are to be paid on conventional heads, namely, loss of estate, loss of consortium and funeral expenses as held in ***'National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009'***. In ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, the concept of consortium, has been dilated in detail, wherein, it has been held that filial consortium is the right of the parents to compensation, in case of accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for the parents is to lose their children for lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Therefore, on the count of 'filial consortium' also, compensation is to be granted.

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/- and these findings have been further endorsed by the Hon'ble Supreme Court in the case titled as ***'The New India Assurance Company Limited v/s Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020'***. It was further held in ***Pranay Sethi's case (supra)*** 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 filial consortium, which is to be paid to each of the parent, Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses.

In view of the aforesaid discussion, the compensation to be granted to the appellants-claimants, is hereby re-appraised as follows:-

Loss of dependency	**:**	**Rs.9,07,200/-**
Loss of consortium (Rs.44,000x2)	**:**	**Rs.88,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Loss of estate	**:**	**Rs.16,500/-**
Total	**:**	**Rs.10,28,200/-**

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to **Rs.10,28,200-4,30,000=Rs.5,98,200/-**.

The amount shall be apportioned and disbursed amongst the appellants-claimants equally, while also taking into consideration, the amount of compensation, if any, earlier paid to the appellant No.1-mother. The impugned Award dated 22.08.2014 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same.

With the above observations, the present appeal stands allowed.

December 15, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

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