IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-3853-2014 (O&M)

Reliance General Insurance Company Limited

...Appellant

VERSUS

Savita and others

...Respondents

(ii) FAO-4792-2014 (O&M)

Savita and others

...Appellants

VERSUS

Satbir Singh and others

...Respondents

Date of Decision: December 08, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Tajender K. Joshi, Advocate
for the appellant (in FAO-3853-2014) and
for respondent No.3 (in FAO-4792-2014).

Mr.B.S.Rathee, Advocate
for the appellants (in FAO-4792-2014) and
for respondents No.1 to 4 (in FAO-3853-2014).

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ARCHANA PURI, J.

These are two appeals, filed to challenge the Award dated 26.09.2013 passed by learned Motor Accident Claims Tribunal, whereby, compensation to the extent of Rs.18,233,39/-, was granted, on account of death of Vinod, in a motor vehicular accident.

Feeling dissatisfied with the extent of compensation, so granted, appellants-claimants have filed FAO-4792-2014, thereby, seeking enhancement of the compensation. However, the insurance company has filed FAO-3853-2014, thereby, challenging the extent of compensation, so granted.

As per version of the claimants, on 08.09.2011, Vinod (since deceased) along with his younger brother had gone to Delhi for some personal work, in Santro Car bearing registration No.HF-10F-1010. Even, two co-villagers namely Sudhir and Sandeep were also accompanying them in another car. After finishing the work, when Vinod was returning to his village and crossed flyover near Libaspur, Delhi, his car got mechanically broken down and it was parked on the *kuccha* berm. After repair of the car, when Vinod and his brother were about to board the car, a truck/dumper bearing registration No.HR-69A-3253, came from behind, being driven by respondent No.1-Satbir Singh, at a high speed, in a rash and negligent manner and struck into the aforesaid Santro car, as a result whereof, Vinod as well as his younger brother, had sustained injuries. Vinod was immediately shifted to Dr.B.R.Ambedkar Hospital, Delhi and during the course treatment, he succumbed to the injuries, at about 12.50 a.m., on 09.09.2011.

So far as, the fact of accident and manner of taking place of the accident, is concerned, the same, as such, has not been disputed by respondents No.1 and 2 (driver and owner), in their reply. Rather, a plea was taken that the car was parked in the middle of the road, without observing traffic rules and deceased was solely responsible for the alleged accident. Even, the insurance company, in separate reply, besides taking preliminary objections about maintainability, cause of action and respondent No.1 was not holding any driving licence, at the time of accident and that the insured violated the terms and conditions of the insurance policy, also took the plea that the accident was not caused due to rash and negligent driving of truck/dumper bearing registration No.HR-69A-3253.

To so substantiate, the manner of accident, the appellants-claimants have examined, an eye witness to the accident namely Man Mohan, who is brother of the deceased s PW-1. He has categorically deposed in his affidavit Ex.PW1/A, about the manner of accident, so caused by respondent No.1-Satbir Singh. He has imputed rashness and negligence, on the part of driver of truck/dumper bearing registration No.HR-69A-3253. Furthermore, even, Savita, appellant-claimant No.1, in her affidavit, Ex.PW2-A, has deposed about factum of death of her husband Vinod, in a motor vehicular accident. Also, post-mortem report has been proved as Ex.P1 and FIR No.329 dated 09.09.2011 under Sections 279 and 304-A IPC, has been proved as Ex.P2.

Though, respondents No.1 and 2 (driver and owner) have not disputed the manner of accident but they disputed the imputation of rashness and negligence, on the part of respondent No.1-Satbir Singh, while driving truck/dumper bearing registration No.HR-69A-3253. However, it is pertinent to mention, to so substantiate this plea, of the accident having caused, due to the negligence, on the part of the deceased, no evidence, as such, has come on record. Even, respondents No.1 and 2 (driver and owner) have not stepped into witness box. Rather, the insurance company has also not bothered to summon the driver of the offending vehicle, who could have deposed about the manner of accident, so caused. Thus, the fact and manner of accident, stands amply established.

In this backdrop, now let us consider the extent of compensation, payable to the appellants-claimants.

It is asserted in the claim petition, about deceased Vinod to be 27 years, at the time of accident and that he was a professional in a private firm and was earning Rs.20,000/- per month. Also, deceased Vinod was indulging in floriculture and medicinal farming by taking land of other farmers on rent basis and used to earn Rs.2 lakh annually. The appellants-claimants, being legal heir, asserted themselves to be dependent upon the earnings of deceased Vinod.

To so substantiate, the avocation so followed by the deceased as well as extent of his earnings, Savita, widow of deceased, in her affidavit Ex.PW2/A, has so stated. Even, PW-1 Man Mohan, brother of the deceased, who was accompanying the deceased, at the relevant time, has also deposed so. Even, Sandeep Bhardwaj, Proprietor of M/s Atul Embroidery, Rai, Sonepat, has been examined as PW-3, who had deposed about the deceased to be working with his firm as Supervisor-cum-Manager and he had been drawing salary of Rs.20,000/- per month. Certified copy of salary certificate is Ex.P3 and computer generated bank statement is Ex.P4. Besides the same, PW-4 Rajnish Kumar, Chief Manager, OBC Bank, had brought the summoned record regarding account of M/s Atul Embroidery, Rai, Sonepat, showing the payment of various amounts, by way of cheque issued by proprietor/authorized signatory of M/s Atul Embroidery, Rai, Sonepat, in favour of Vinod. Also, the acknowledgment of the Income Tax

Department, has been proved as Ex.P5 and the income tax return is Ex.P6.

So far as, assertion of deceased Vinod, being a professional in a private firm, is concerned, the same does not stand sufficiently established, from the evidence adduced on record. No doubt, PW-3 and PW-4, as stated aforesaid, had deposed about the employment of the deceased, but however, it is pertinent to mention that the firm M/s Atul Embroidery, Rai, Sonepat, is not registered one and also PW-3 Sandeep Bhardwaj had stated in cross-examination that he had not brought the record regarding employment and salary of Vinod (since deceased). Since, there was no document, brought on record by the Proprietor of the firm regarding employment and also with regard to the any register maintained by it, qua the employees of the said firm, which included name of Vinod, as such, solely, on account of salary certificate, which did not form any part of document maintained, in due course, reliance, as such, cannot be placed. Even though, it is a submission made about the payment, having been made by way of cheques, which stands established, but solely on account of payment having been made by cheques, do not establish about the cheques, having been issued, on account of the salary, so disbursed and there is no supportive document, to so establish. Therefore, this plea of employment with M/s Atul Embroidery, Rai, Sonepat, as such, does not stand established.

However, there is acknowledgment receipt, coming on record, which is Ex.P5. Perusal of the same reveals about the total gross income of the deceased to be Rs.1,58,250/-. Though, no evidence, as such, is coming on record about the indulgence of deceased in floriculture and medicinal farming by taking land of other farmers, but however, suffice to consider this acknowledgment receipt, which establish about total earnings of the deceased to be approximately Rs.1,60,000/- annually.

Learned counsel for the insurance company submits that this acknowledgment, as such, is not sufficient and as such, cannot be taken into consideration. But however, it is pertinent to mention that this acknowledgment receipt bears the signatures of the office of Income Tax Officer and considering the Motor Vehicle Act to be benevolent piece of legislation and proceedings to be conducted in summary manner, suffice to consider the same. This acknowledgment relates to the year 2010-2011. As such, learned Tribunal has appropriately taken the annual earnings of the deceased as Rs.1,60,000/-.

Furthermore, it is pertinent to mention that addition of 40% is required to be made as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, on the count of future prospects. Considering it to be so, the total annual earnings comes to be Rs.1,60,000+64,000(40%)=Rs.2,24,000/-.

At this juncture, it is pertinent to mention that learned counsel for the appellants-claimants submits that at the time of death of Vinod, appellant-claimant No.1-Savita was pregnant and her son namely Yash (appellant-claimant No.4), was born on 12.04.2012, i.e. during the pendency of the claim petition. It is submitted that amended title had also been submitted and therefore, appellant-claimant No.4 is also to be considered as prospective dependent upon the earnings of the deceased and therefore, considering the number of dependents to be four, at the time of death of Vinod, deduction ought to be of to the extent of 1/4th, but learned

Tribunal had fell in error, while making deduction of 1/3rd from the earnings of the deceased worked upon aforesaid. However, the aforesaid submission is not tenable. A close perusal of the record of the Tribunal reveals that initially the claim petition was filed by four claimants namely, Savita, Kunal, Bimla and Man Mohan against Satbir Singh, being driver, Anand Parkash, being driver of the truck/dumper bearing registration No.HR-69A-3253. Particulars of insurer, as such, was not filed. Thereafter, amended title was filed on 08.12.2011 and perusal of the same reveals that addition of details of insurance company (respondent No.3) had been made. However, there was no mention of the birth of a child, subsequently and addition of his name was not made in the amended title. Nowhere, there is pleading coming forth regarding birth of a child, namely Yash, after the death of Vinod, even though, PW-1 Man Mohan and PW-2 Savita, in their affidavits, have so deposed. Such being the position, when there is no pleading, coming on record, about the birth of Yash-appellant No.4, subsequent to the death of Vinod, therefore, his case for entitlement to compensation, cannot be considered. If it is not so, then we are having four claimants. However, appellant-claimant No.4 is brother of the deceased and his age was 25 years. There is nothing, coming on record, about his dependency upon the deceased. Therefore, learned Tribunal had rightly held him not entitled to compensation. That being so, learned Tribunal had rightly made the deduction of 1/3rd of the income as personal expenses of the deceased, as per guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***.

Thus, out of earnings of Rs.2,24,000/- as worked upon aforesaid, deduction of 1/3rd to the extent of Rs.74,666/- is to be made and loss of earnings comes to be Rs.1,49,334/-. Considering the age of the deceased, the appropriate multiplier as per Sarla Verma's case (supra) is '17'. After application of this multiplier, the compensation on the count of loss of dependency comes to be Rs.25,38,678/-.

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 judgments 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 ***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 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 the appellants-claimants is re-appraised as following:-

Loss of dependency	**:**	**Rs.25,38,678/-**
Loss of consortium (Rs.44,000x3)	**:**	**Rs.1,32,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Loss of Estate	**:**	**Rs.16,500/-**
Total	**:**	**Rs.27,03,678/-**

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to **Rs.27,03,678-18,233,39=Rs.8,80,339/-**.

The apportionment and disbursement of the enhanced amount of compensation, shall be made amongst appellants-claimants No.1 to 3, as ordered by learned Tribunal. However, appellants-claimants No.1 to 3 shall be entitled to interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The impugned Award dated 26.09.2013 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain same.

With the above observations, the appeal filed by the appellants-claimants i.e. FAO-4792-2014 stand allowed, whereas, appeal filed by the insurance company i.e. FAO-3853-2014 stands dismissed.

December 09, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

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