IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4212-2014 (O&M)
Date of Decision: December 15, 2022

Geta Devi and others

....Appellants

Versus

Madan Lal and others

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr.A.K.Yadav, Advocate
for the appellants.

Mr.Rajbir Singh, Advocate for
Mr.Sanjeev Goyal, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J

Challenge in the present appeal is to the Award dated 25.02.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation has been granted to the appellants-claimants, on account of death of Jogender Singh, 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.7,29,800/- to the appellants-claimants. Even, the liability of the respondents, i.e. driver, owner and insurance company, was held to be joint and several

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

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extensive enhancement of the compensation.

As per the version of the appellants-claimants, on 28.03.2013, Jogender Singh was travelling in a three wheeler bearing registration No.HR-47B-7205, being driven by respondent No.1-Madan Lal, in a rash and negligent manner and at a high speed. At about 12.30-1.00 p.m., when the vehicle reached ahead of Saharanwas bus stand, near Shashi Bhushan Bhatta, Jogender Singh fell from the three wheeler on the road and sustained injuries and died, while he was on the way to hospital. It is specific claim the appellants-claimants that the accident taken place due to the rashness and negligence, on the part of respondent No.1-Madan Lal, while driving the offending vehicle.

In reply, respondents No.1 and 2 have denied the factum of accident and involvement of the vehicle in question. Even, the insurance company, in its separate reply, had denied about the accident and involvement of the vehicle in question.

To so substantiate the imputation of rashness and negligence, at the behest of respondent No.1, Rajesh Kumar has been examined as PW-5 by the appellants, who deposed about having witnessed the accident in question and he has deposed about the manner of accident, caused due to rashness and negligence, on the part of respondent No.1, driver of three wheeler and the same resulted into injuries, on the person of Jogender Singh, which proved fatal.

Even, PW-1 EHC Virender Singh has brought the record relating to FIR No.63 dated 28.03.2013 under Sections 279, 304-A IPC, got registered and also deposed about the challan already having been presented

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against Madan Lal, before the Illaqa Magistrate. Copy of FIR is Ex.PW1/A and report under Section 173 Cr.P.C. is Ex.PW4/D. Even, the post-mortem report is Ex.PW4/C.

It is pertinent to mention that though respondents have denied the accident in toto, but however, to so substantiate this plea of denial, no evidence of any kind, has been brought on record. Even, respondent No.1-Madan Lal, in the capacity of being driver of the alleged three wheeler, would have been the best person, to so substantiate this plea of denial, but however, he had chosen to remain away from the witness box. Thus, considering the evidence adduced, at the behest of the appellants-claimants, the fact of accident and imputation of rashness and negligence, as asserted, stands amply established. Moreover, the driver, owner as well as the insurance company, have not chosen to file any appeal against the aforesaid findings. Considering the same, the findings, so recorded by learned Tribunal, has thus attained finality.

In this backdrop, now let us consider the compensation, to be so granted to the appellants-claimants. It is specific assertion of the appellants about Jogender Singh, deceased to be working at Nisha Tent House at Nangal Mundi and that he was earning Rs.11,000/- per month. PW-3 Satbir Yadav has been examined, who has deposed about the deceased to be working as Generator Operator and that he was also doing the job of lighting and generator work, at his tent house and having salary of Rs.11,400/- per month. However, it was rightly observed by learned Tribunal that no document, relating to ownership of PW-3 Satbir Singh qua the tent house as well as relating to the employment of the deceased and the

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extent of earning, so disbursed to the deceased as well as to his other employees, has been brought on record. Even, the record relating to his income tax, has not been proved. Considering the same, the assertion of the earnings of the deceased to be Rs.11,400/- has been rightly discarded. However, learned Tribunal had taken the monthly income of the deceased to be Rs.4,200/-, at the relevant time. Considering the minimum wages prevalent, at the relevant time, this extent of earnings has been taken on lower side. 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/-.

The appellants-claimants, who are dependent upon the deceased are four in number and thus, as per the guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction, on account of personal and living expenses, has to be made to the extent of $1/4^{th}$. After deducting $1/4^{th}$, the loss of dependency comes to be Rs.8400-$1/4^{th}$=Rs.6,300/- i.e. Rs.75,600/- per annum.

At this juncture, it is pertinent to mention that deceased Jogender Singh was asserted to be 29 years old, at the time of accident. However, learned Tribunal, considering the recitals as mentioned in the post-mortem report Ex.PW4/C, had taken the age of the deceased as 32 years. It has also been specifically observed by learned Tribunal that there is no other documentary evidence, in support of age of Jogender Singh. However, this observation is palpably wrong.

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Perusal of the record reveals that the school certificate of the deceased has been proved as PW-4/B, whereby, the date of birth of Jogender Singh has been mentioned as 05.08.1983. This document had come into existence, much prior to the date of death of Jogender Singh and therefore, it cannot be discarded. Taking the same into consideration, the age of the deceased, at the relevant time, is taken to be about 29½ years. Considering this to be the age of the deceased Jogender Singh, the appropriate multiplier as per guidelines laid down in ***Sarla Verma's case (supra)*** is '17' instead of '16', as so applied by the Tribunal. Thus, the loss of dependency is worked upon as Rs.75,600x17=Rs.12,85,200/-.

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

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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.

During the course of arguments, learned counsel for the appellants has submitted that appellants are also entitled to compensation, on the count of 'loss of love and affection'. But however, it is pertinent to make reference to the decision rendered by the Hon'ble Supreme Court in ***Magma's case (supra)***, wherein, it is laid down that '**loss of love and affection is comprehended in loss of consortium**'. Hence, there is no justification to award compensation towards 'loss of love and affection', as a separate head, which view was further endorsed in ***Somwati's case (supra)***.

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

Loss of dependency	**:**	**Rs.12,85,200/-**
Loss of consortium (Rs.44,000x4)	**:**	**Rs.1,76,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Loss of estate	**:**	**Rs.16,500/-**
Total	**:**	**Rs.14,94,200/-**

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.14,94,200-7,29,800=Rs.7,64,400/-**.

Out of the said enhanced amount, a sum of Rs.2 lakh

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each, be disbursed to appellants-claimants No.1 to 3 (widow and children of the deceased and residue amount of Rs.1,64,400/-, be disbursed to appellant-claimant No.4 (mother of the deceased). The impugned Award dated 25.02.2014 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**

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