IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2336-2017
Reserved on :
Date of Decision: December 12, 2022

Pushpa and another **… Appellants**

Versus

Mohan and others **…Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kuldeep Sheoran, Advocate for the appellants.

Mr. Rajnish Malhotra, Advocate for respondent No.3.

DEEPAK GUPTA, J.(Oral)

This appeal has arisen from award dated 5.9.2016 passed by Ld. Motor Accident Claims Tribunal, Hisar in Petition N: 82 of 2015, whereby compensation of ₹20,73,000/- was allowed to the claimants on account of death of one Bhal Singh in a motor vehicular accident. Not satisfied with the quantum of compensation, claimants filed this appeal seeking enhancement.

2. Facts, in brief, as pleaded by the claimants are that Bhal Singh died in a motor vehicular accident, which took place on 30.08.2015 while riding a motorcycle. He was hit by the driver of offending jeep bearing registration No.HR-01-AD-2531, who was driving the same in rash and negligent manner. Offending jeep was being driven by respondent No.1. It was owned by respondent No.2 and insured by respondent No.3. Appellants-claimants are the wife and son of the deceased, who claimed that the deceased was working as a bank security guard being an ex- serviceman getting salary of ₹21,078/- per month

from Union Bank of India, besides ₹15,108/- as pension. Deceased was 52 years of age at the time of his death. An amount of ₹1,50,000/- was spent on the treatment prior to his death besides transportation of the dead body and last rites etc.

3. Respondents opposed the claim petition by denying the accident. Respondent No.3 also refuted the claim on the ground that the driver did not have a valid and effective driving licence.

4. After framing necessary issues, learned Tribunal vide Award dated 05.09.2016 held that accident was caused due to rash and negligent driving of the offending jeep being driven by respondent No.1 resulting in the death of Bhal Singh. It was found that though the deceased was getting pension of ₹15,000/- per month being ex-serviceman but the claimants were still drawing the same amount towards pension and thus, there was no loss qua the pension. It was further found that deceased was working as security guard in the Union Bank of India getting salary of ₹ 21,078/-. Considering this amount, the income of the deceased was rounded off at ₹21,000/- per month i.e. ₹2,52,000/- per annum. 1/3rd was deducted towards personal expenses of the deceased and thus, loss of dependency was found to be ₹1,68,000/- per annum. After applying the multiplier of 11, compensation was assessed at ₹18,48,000/-. The amount of ₹1,00,000/- was added towards loss of consortium to the claimant-wife and another amount of ₹1,00,000/- towards loss of love and affection jointly to both the claimants. ₹25,000/- was awarded on account of expenses incurred on the transportation of the dead body and last rites and in this way, total compensation was assessed at ₹20,73,000/-. No

evidence was produced by the Insurance Company regarding the driver not having a valid driving licence. With these findings, all the respondents were held jointly and severally liable to pay the assessed compensation amount along with interest @ 7.5% per annum.

5. It is contended by the appellants-claimants that pension amount of ₹15,108/- per month has been wrongly not taken into consideration. Besides, deceased remained admitted for 5 days in hospital prior to his death and it is not possible that no amount was incurred on his medical treatment but nothing has been awarded under this head. Nothing has been awarded towards loss of estate or towards transportation. Apart from this, no compensation has been awarded towards the future prospects.

6. Notice of motion was issued only to the Insurance Company.

7. I have heard counsel for the parties and perused the record.

8. As far as issue of negligence is concerned, it is not in dispute as there is no appeal by the Insurance Company or driver / owner.

9. Coming to the amount of compensation, deceased was getting salary of ₹21,078/- as security guard while working in Union Bank of India. As per letter Ex.P-3 issued by the bank, the deceased had joined as security guard on 30.03.2006 i.e. more than 9 years prior to his accidental death and thus, had a secure job.

10. In ***National Insurance Company Limited vs Pranay Sethi and others",*** reported as 2107 Supreme (SC) 1050, a constitutional Bench of Hon'ble Supreme Court has held as under:

> *"61. In view of the aforesaid analysis, we proceed to record our*

conclusions:-

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(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

11. As deceased, in this case, had a secure job for the last more than 9 years, so in view of dictum of ***Pranay Sethi*** as above, 30% of his earning is liable to be added towards future prospects, deceased being above 50 years of age but less than 60 years of age.

12. After adding 30 % towards future prospectus, earnings works out to be (21078 x 12 x 130/100) = ₹3,28,816.8/- per annum.

13. Apart from above, deceased was getting pension of ₹15,108/- per month. This amount has not been included by the Tribunal in the income of the deceased on the ground that same is still being drawn by the appellants-claimants and as such, there is no loss to them qua pension amount with the accidental death of the deceased. This view

taken by learned Tribunal is legally not correct.

14. In case of ***"Helen C. Rebello vs Maharashtra SRTC,*** reported as (1999) 1 SCC 90, it has been held by the Hon'ble Supreme Court, which is as under:-

> *"Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly., family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount.*

15. In ***"Lal Dei and others vs Himachal Road Transport"***, (2007) 8 SCC 319, Hon'ble Supreme Court by following ***Helen C. Rebello's case (supra)*** held as under:-

> *" 4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor*

Accident Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello v. Maharashtra SRTC, this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. ....”

16. In **Sebastiani Lakra Vs. National Insurance Company Ltd. 2018(4) R.C.R. (Civil) 837,** a three Judges Bench of Hon’ble Supreme Court held that deductions cannot be allowed from amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of deceased. Hon’ble Supreme Court held that these amounts are earned by deceased on account of contractual relations entered into by him with others and it cannot be said that these amounts accrued to the deceased or legal heirs of deceased on account of his death in motor vehicle accident.

17. It is, thus, clear from the legal position as above, that pension/family pension amount being drawn by the deceased, cannot be deducted from his earnings on the pretext that claimants are getting the said amount. As such, it is held that an amount of ₹15,108/- per month is liable to be added in the income of the deceased i.e. ₹1,81,296/-.

18. After adding income (including future prospects) of deceased, which he was getting as Security Guard in Union Bank of India

to the pension amount, his annual earnings comes to ₹5,10,112.8/-.

19. As held in ***Pranay Sethi's case,*** applicable income tax is liable to be deducted. As income up to ₹2,50,000/- is exempted from the tax, so the deceased was liable to pay the tax on the balance of income. Tax liability comes to ₹27,022.6/-. After this deduction, earnings of the deceased comes to ₹4,83,090/-. There being two claimants, 1/3rd of the income is to be deducted towards personal expenses of the deceased as per law laid down by Hon'ble Supreme Court in case of ***"Sarla Verma v Delhi Transport Corporation",*** reported as (2009) 6 SCC 121, affirmed in ***Pranay Sethi's*** case (*supra*). After 1/3 cut, loss of dependency works out to be ₹35,42,660/-.

20. It has been held in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, (2018) 18 SCC 130*** that the word 'consortium' includes spousal consortium, parental consortium as well as filial consortium. Referring to the said authority, it has been further held by Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur & others, 2020(3) R.C.R. (Civil) 75,*** as under:-

> *"In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., **(2018 18 SCC 130: 2018(4) RCR (Civil) 333** this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
>
> *Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.*

Filial consortium is the right of the parents to compensation in the case of an 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 a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.

The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra)."

21. Having regard to the legal position as above, one of claimants being son of the deceased cannot be denied the compensation under the head of loss of parental consortium on account of death of his father.

22. In **Pranay Sethi's case** (announced by Hon'ble Supreme Court on 31st October 2017), while allowing allowing ₹40,000/- for loss of consortium; ₹ 15,000/- for funeral expenses and ₹15,000/- for loss of estate, it was held that these amounts should be enhanced @ 10% in every three years. Said addition was also allowed by Hon'ble Supreme Court in **N. Jayshree & others Vs. Cholamandalam MS General Insurance Company Ltd., 2021(4) RCR (Civil) 642.**

23. In view of above, it is held that the compensation towards funeral expenses; loss of estate and loss of consortium are to be allowed with 10% increase in the amounts as above i.e. ₹16,500/- for funeral expenses; ₹16,500/- for loss of estate; and ₹ 88,000/- (₹44,000/- each) for loss of consortium/ parental consortium.

24 There is no evidence on record that any amount was spent towards the treatment prior to the accidental death nor there is any evidence regarding the amount spent towards transportation.

25. In view of the above, the compensation allowable to the claimants is as under:-

Sr. N:	**Head of Compensation**	**Amount**
1	Loss of dependency	₹35,42,660/-
2	Loss of consortium/ parental consortium	₹ 88,000/- *(₹44,000 each)*
3	Funeral Expenses	₹16,500/-
4	Loss of Estate	₹16,500/-
Total:		₹36,63,660/-
Already allowed by the Tribunal		₹20,73,000/-
Enhanced Compensation		**₹15,90,660/-**

26. As such, appellants – claimants are held entitled to the enhanced compensation of ₹15,90,660/- along with interest @ 7.5 % per annum from the date of filing of the petition till realisation, to be shared equally.

Appeal is disposed of accordingly.

December 12, 2022 **(DEEPAK GUPTA)**
sarita **JUDGE**

Whether Speaking/reasoned Yes/No
Whether reportable: Yes/No

SARITA RANI
2022.12.14 12:52
I attest to the accuracy and integrity of this document/order