IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-972-1993 (O&M)
Date of Decision: August 29, 2023

Smt.Viney Sharma and others

...Appellants

VERSUS

M/s Paramount Agencies and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Ekta Thakur, Advocate
for the appellants.

Mr.Rakesh Nagpal, Advocate
for respondents No.1 and 2.

Mr.Lalit Garg, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the death of Vijay Kumar Sharma, in the accident, which took place on 25.12.1991, having caused due to rash and negligent driving of Maruti Van bearing registration No.CHK-2414, driven by respondent No.2-Jagmoham Kohli.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.2,30,400/- to the appellants-claimants.

Aggrieved by the same, the present appeal has been preferred by the appellants-claimants for seeking compensation under several heads, where no amount has been awarded by learned Tribunal and also for enhancement of the amount awarded by learned Tribunal, under different heads.

At the very outset, it is pertinent to mention that so far as fact of accident and manner of taking place of the same as well as the liability of the driver, owner and insurer of the offending vehicle to be joint and several, are concerned, no appeal, as such, has been filed by the persons, who had been made liable, to challenge the Award and thus, the finding so arrived, has attained finality.

It is only an appeal, filed by the appellants-claimants, who are widow and children of the deceased, thereby, seeking enhancement of the compensation, so awarded by learned Tribunal.

It is categoric claim of the appellants that deceased Vijay Kumar Sharma was running business in the name of M/s Nathmal Flour Mill, at village Hallo Majra and was having income of Rs.10,000/- per month, from the said business. To establish the avocation followed by the deceased, claimant Viney Sharma, widow, has stepped into witness box as PW-1. Besides deposing about the fact of death of Vijay Kumar Sharma, in a motor vehicular accident, she has also deposed about the avocation of the deceased and also about income of the deceased, from the said flour mill. Furthermore, PW-3 Sh.K.R.Sharma, Accountant of Nathmal Flour Mill has also been examined, who deposed about deceased to be partner in M/s Nathmal Flour Mill and had also deposed about the said firm to be having Sale Tax number and the firm was maintaining balance-sheets. He proved the latest balance-sheets as Ex.P3 and Ex.P4 and also proved, copy of partnership deed Ex.P5. Further, this witness deposed that after the death of Vijay Kumar Sharma, the firm has since closed.

To counter aforesaid assertions and the evidence, so coming on record, with regard to the avocation followed by the deceased, no evidence, as such, has been led by the respondents. But anyhow, learned counsel for the insurance company submits that no income tax returns or account books, as such, have been filed and therefore, adverse inference has been rightly drawn by learned Tribunal. However, aforesaid submission is not tenable. No doubt, some clue can be taken with regard to the assessment of income from the income tax returns, if so produced in evidence, but however, it is all the more not mandatory to produce income tax returns. Anyway, income of the deceased ought to be taken into consideration, as established from the evidence, coming on record. From the partnership deed, coming on record, it stands established that Vijay Kumar Sharma was partner in M/s Nathmal Flour Mill. Even, balance-sheets of the said firm have been proved as Ex.P3 and P4. Considering the same and other evidence, coming on record, in modest estimate, the earnings of the deceased can conveniently be taken to be Rs.3,000/- per month. Such being the earnings, so taken, the compensation, so assessed by learned Tribunal calls for re-computation.

Besides the aforesaid also, it should be noted that addition of 40%, on account of future prospects, ought to be made. Even though, the claimants had asserted about the deceased to be 30 years old, at the time of accident, but however, in the partnership deed, which is coming on record, the age of the deceased is mentioned to be 37 years and therefore, learned

Tribunal has rightly considered the age of the deceased to be 37 years.

From the evidence on record, it stands amply established that Vidya Dhar Shama, is father of the deceased and is aged about 70 years. Appellant-claimant No.1 Viney Sharma has categorically stated about her father-in-law to be alive and he is living with her. She further categorically deposed that her father-in-law was also dependent upon the income of deceased Vijay Kumar Sharma. However, this assertion has not been challenged by way of any cross-examination. In the given circumstances, learned Tribunal had rightly held Vidya Dhar Sharma also to be entitled to compensation. Though, the claim petition had been filed at the instance of widow and two children of the deceased, but however, since, father of the deceased is held to be entitled to compensation, the number of dependents, comes to be '4' and in the light of the same, the deduction, on account of personal expenses ought to be **1/4th**, instead of **1/3rd**. Thus, the loss of earnings comes to be Rs.3000+40%-1/4th=Rs.3150/- per month, which annually comes to be Rs.3150x12-Rs.37,800/-

Keeping in view the age of the deceased, multiplier of '16', so taken by learned Tribunal is on higher side. As per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier for the age group of 36-40 is '**15**' and considering the same, in the present case, the suitable multiplier to be applied is '**15**', instead of '**16**' and by applying the same, the loss of dependency comes to be **Rs.37,800x15=Rs.5,67,000/-**.

Besides the same, under the conventional heads, the compensation has to be worked upon. In this regard, reference is made to decision rendered in

Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327, wherein, the Hon'ble Supreme Court, while relying upon ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** , had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***, wherein also, the Hon'ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of 'spousal consortium' for wife and 'parental consortium' for two children.

In the given circumstances, all the claimants as well as father of the deceased, are also entitled to compensation, on the count of 'loss of consortium' individually. In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the extent of consortium which should be paid is stated to be Rs.40,000/- each with 10%, which comes to Rs.44,000/- each. Thus, the total compensation, on the count of 'loss of consortium' comes to be **Rs.44,000x4=Rs.1,76,000/-**. Besides the same, on the count of 'funeral expenses' as well as for 'loss of estate', as per Pranay Sethi's case (supra) with 10% enhancement, after three years, which has since passed by, the claimants as well as father of the deceased are entitled to **Rs.16,500/-** on each of the aforesaid counts.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed, as herein given:-

1.	Loss of dependency	Rs.5,67,000/-
2.	Loss of consortium	Rs.1,76,000/-
3.	Loss of estate	Rs.16,500/-

4.	Funeral expenses	Rs.16,500/-
	Total	**Rs.7,76,000/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.7,76,000-2,30,400=Rs.5,45,600/-**. On the enhanced amount of the compensation i.e. **Rs.5,45,600/-**, the appellants-claimants as well as father of the deceased shall be entitled to the 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. Out of the enhanced compensation, as now awarded, 50% of the amount shall be disbursed to claimant No.1-Smt.Viney Sharma, 20% of the amount shall be disbursed to each of claimants No.2 and 3, namely Megha Sharma and Rahul Sharma and remaining 10% of the compensation, shall be disbursed to Sh.Vidya Dhar Sharma, father of the deceased.

The impugned Award dated 05.03.1993 stands modified, to the extent, as indicated aforesaid and the remaining terms of the impugned Award, shall remain same.

With the above observations, the present appeal stands allowed.

August 29, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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