2023:PHHC:115184

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1149-1999 (O&M)
Date of Decision: September 01, 2023

Satya Devi and another

...Appellants

VERSUS

Balkar Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.A.P.Bhandari, Advocate
for the appellants.

Appeal qua respondents No.1, 5 to 12 not pressed.

Respondents No.2 and 3 proceeded against ex-parte.

Mr.Suvir Dewan, Advocate
for respondent No.4.

****

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants i.e. widow and minor son of deceased Kuldip Singh, thereby, seeking enhancement of the compensation, so awarded by learned Motor Accident Claims Tribunal, on account of death of Kuldip, in a motor vehicular accident, which took place on 01.07.1994.

On appraisal of the evidence brought on record, learned Tribunal had granted compensation, to the extent of Rs.2,88,000/- to the widow, minor as well as parents of the deceased.

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants Satya Devi and Manphool have filed the present appeal for seeking enhancement of the compensation.

So far as the fact of accident and manner of taking place of the same, as well as involvement of the offending vehicle i.e. truck bearing registration No.HYR-4811 and the liability, so fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that none of the persons, so made liable, have filed the appeal, to assail the Award passed by learned Tribunal and as such, the findings, so recorded by learned Tribunal have attained finality.

At the very outset, learned counsel for the appellants-claimants has submitted that earnings of the deceased have been erroneously considered on lower side. Even the multiplier of '16' has been applied, whereas, suitable multiplier was '25'. It is submitted that the compensation, so worked upon, is too meagre. As such, a prayer has been made for extensive enhancement of the compensation.

On the contrary, learned counsel for the Insurance Company has resisted the claim of the appellants-claimants. In fact, learned counsel submitted that no satisfactory evidence, with regard to extent of earnings of the deceased, as such, is coming on record. In the light of the same, the compensation, so worked upon by learned Tribunal, is just and reasonable, which calls for no interference.

At the very outset, it is should be noted that it is the specific case of the appellants-claimants that deceased Kuldip Singh was employed as Compounder with Dr.Raj Kumar Garg, Vishal Nursing Home, Cheeka

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh

and was engaged in dairy farming and was earning Rs.2,500/- per month. To so substantiate the avocation, followed by the deceased and extent of his earnings, claimant Satya Devi ha stepped into witness box as PW-2. Though, she deposed as per pleaded case, but however, besides her statement, no other evidence has been led to substantiate the extent of earnings. But any how, there is nothing, as such also, coming on record, to dispute the assertion, so made by the claimant.

In the given circumstances, learned Tribunal has appropriately considered the earnings of the deceased to be Rs.2,000/- per month. However, addition of future prospects and compensation under the conventional heads ought to be made qua extent of earnings of the deceased and therefore, the compensation, so worked upon by learned Tribunal, requires re-computation.

Considering the monthly earnings of the deceased to be Rs.2,000/-, the annual income comes to be Rs.24,000/-. Deceased Kuldip Singh was stated to be about 21 years old. Relating to the same, suffice to make reference to the recitals of the post-mortem report as well as the testimony of PW-2. Considering the said age and also the nature of avocation followed, addition of 40% of his earnings ought to be made, towards future prospects. Thus, the monthly earnings comes to be Rs.2000+800(40%)=Rs.2,800/-.

It is specific claim that the appellants-claimants as well as parents of the deceased to be dependent upon the earnings of the deceased. Thus, considering the number of dependents, upon the earnings of the deceased, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3)***

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh

RCR (Civil) 77, the deduction has to be made to the extent of 1/4th of the earnings, towards personal expenses and after deducting the same, the monthly earnings comes to be Rs.2,100/- i.e. Rs.25,200/- per annum. As per ***Sarla Verma's case (supra)***, considering the age of the deceased, '**18**' is the suitable multiplier to be applied. Thus, by applying the same, the loss of dependency comes to be **Rs.25,200x18=Rs.4,53,600/-.**

Besides the aforesaid, amounts are to be paid on conventional heads, namely, loss of estate, loss of consortium and funeral expenses as held in ***Pranay Sethi's case (supra)***. 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 account of filial consortium also, compensation is to be granted.

Also, it is pertinent to mention that in the Award, besides the appellants-claimants, who were widow and minor son of the deceased, even parents of the deceased, namely Bua Devi and Fajal Ram, have also been granted compensation. Though, they have not sought enhancement of compensation, but however, it is pertinent to mention that besides the aforesaid compensation, so worked upon, on the count of loss of consortium also, the compensation is to be paid to all the dependents.

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh

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's case (supra)***, 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 consonance with the observations made in ***Pranay Sethi's case (supra)***, after making addition of 10%, after three years from the passing of the judgment, the amount payable, on the count of '**loss of consortium**' is to extent of **Rs.44,000/-** to each of the appellants as well as parents of the deceased and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.16,500/-**, on each count.

Considering the same, the compensation payable to dependents, on account of death of Kuldip Singh, is re-appraised, as herein given:-

Loss of dependency	:	**Rs.4,53,600/-**
Loss of consortium	:	**Rs.1,76,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.6,62,600/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,62,600-2,88,000=Rs.3,74,600/-**.

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh

However, the enhanced compensation, so worked upon, also relates to the proportionate amounts to be paid to Bua Devi and Fajal Ram, who are parents of the deceased. Said Fajal Ram has since died and the amount falling to his share shall proportionately be granted to his LRs, who have already been impleaded before learned Tribunal. In the light of the same, out of the enhanced amount, besides Rs.44,000/- each to be granted to Bua Devi as well as to Fajal Ram, proportionate share out of ‘loss of estate’ and ‘funeral rights’, so worked upon as Rs.33,000/-, both the aforesaid parents, shall be entitled to an amount of Rs.5000/- each.

After deducting the aforesaid amounts, the residue enhanced compensation, works out to be Rs.3,74,600-98,000=Rs.2,76,600/. From the residue enhanced compensation, Rs.1,76,000/- be disbursed to appellant-claimant No.1-Satya Devi and Rs.1 lakh to appellant-claimant No.2.

On the enhanced amount of the compensation i.e. **Rs.3,74,600/-**, the appellants-claimants as well as parents of the deceased shall be entitled to the interest, at the rate of 7% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

The impugned Award dated 03.11.1998 stands modified, to the extent, as indicated aforesaid and the remaining terms of the Award, shall remain the same.

With the above observations, the present appeal stands allowed.

September 01, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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

VINEET GULATI
2023.09.05 10:29
I attest to the accuracy and
authenticity of this document
Chandigarh