2023:PHHC:048617

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-1671-2003 (O&M)

Usha Devi

...Appellant

VERSUS

Rajinder and others

...Respondents

(ii) FAO-1672-2003 (O&M)

Usha Devi

...Appellant

VERSUS

Rajinder and others

...Respondents

Date of Decision: April 10, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Anurag Goyal Advocate
for the appellant (in both the appeals).

Mr.A.S.Sidhu, Advocate
for respondent No.3-Insurance Company (in both the appeals).

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ARCHANA PURI, J.

These are two appeals filed to challenge the Award dated 13.01.2003 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted, on account of death of Inder Singh and his son Rinku, in a motor vehicular accident, which took place on 17.07.1999.

As evident from the record, initially, three separate claim petitions were filed. Usha Devi had filed MACT-101-1999, for seeking compensation, on account of death of her husband Inder Singh in a motor vehicular accident. Likewise, she had also filed MACT-102-1999, for seeking compensation, on account of death of her son Rinku, in the said accident. Besides the aforesaid, one claim petition was filed by Ramphal, on account of injuries sustained by him, in the accident in question. However, all the three claim petitions were consolidated and were decided together, vide impugned Award.

On perusal of the evidence adduced, learned Motor Accidents Claims Tribunal had awarded compensation to the extent of Rs.3,01,400/-, on account of death of Inder Singh. Besides the same, another amount of Rs.65,000/- was awarded as compensation, on account of death of Rinku, son of Usha Devi. Though, compensation was also granted to Ramphal, who had sustained injuries in the accident in question, but his case is not the subject matter of the aforesaid appeals.

Being dissatisfied with the awarded amounts, appellant-claimant Usha Devi has filed the respective appeals for enhancement of the compensation, vis-a-vis, death of her husband Inder Singh and son Rinku, in the accident in question.

So far as the fact of accident and manner of its taking place, as well as liability of the driver, owner and insurer of the offending vehicle to be joint and several are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable to challenge the Award and thus, findings so arrived have attained finality.

In this backdrop, learned counsel for the appellant-claimant has submitted that compensation granted, on account of death of Inder Singh as well as his son Rinku, in the accident, is meagre, which calls for extensive enhancement.

On the other hand, learned counsel for the Insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon and thus, he submits that both the appeals sans merit and deserves to be dismissed.

Reverting to the computation of compensation, in the appeals in hand. Firstly, let us consider FAO-1671-2003, which relates to the death of Inder Singh husband of Usha Devi. From the evidence adduced, it is evident that deceased was 35 years old, at the time of accident and he was working in Air Force at New Delhi. Last pay certificate of the deceased has been proved as Ex.P7. Perusal of the same reveals about his monthly earnings, as on 18.07.1999, to be Rs.5,595/-.

In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, it has been categorically held that the gross income of the deceased has to be taken into consideration. Except the deduction on account of income tax, no deduction is to be made from the salary, qua other allowances. The income of the deceased is actual salary minus the tax component. In the case in hand, the salary of the deceased is Rs.5,595/- per month, which comes to be Rs.67,140/- per annum. In the year 1999, the tax slab was 'Nil' upto Rs.50,000/-. Therefore, the annual income of the deceased, only beyond Rs.50,000/-, comes under the tax bracket.

From the material on record, it is evident that the deceased was 35 years old, at the time of accident. As per ***Pranay Sethi's case (supra)***, keeping in view the age and the avocation so followed by the deceased, addition of 50% has to be made, on the count of '**future prospects**' and thus, the income comes to be Rs.5,595+2797(50%)=Rs.8,392/-. The tax slab was '**Nil**' upto Rs.50,000/-, at the relevant time, but, for the amount from Rs.50,000 to Rs.60,000/-, it was 10% and for the amount from Rs.60,000/- to Rs.1,50,000/-, it was 20% of the amount. Thus, tax payable is as under:-

Rs.8392x12 = Rs.1,00,704/- (annual income)	
Tax upto Rs.50,000/-	= Nil
Rs.50,000 to Rs.60,000/- @ 10%	= Rs.1,000/-
Rs.60,000 to Rs.1,00,704 (rounded off as Rs.1,01,000/-), which comes to i.e. Rs.41,000/- @ 20%	= Rs.8,200/-
Total tax	**= Rs.9,200/-**

Thus, after deducting Rs.9,200/- from the annual income of Rs.1,00,704/-, the remaining income comes to be Rs.91,504/-.

However, it is pertinent to mention that learned Tribunal did not take into consideration the tax component and did not make necessary deduction, on that count. Besides the same, learned Tribunal also fell in error, considering the loss of dependency as 1/3rd only. After making deduction of 1/3rd, as personal expenses, out of residue 2/3rd, considering the fact of death of son of the deceased and claimant, only 1/3rd was taken as loss of dependency, which was payable to Usha Devi-claimant, widow of the deceased. However, this calculation is palpably wrong.

Very true, son of the deceased and claimant namely Rinku, who was 6 years old, had also died in the accident in question and connected appeal relates to the enhancement of the compensation, vis-a-vis, death of Rinku also, but however, the fact of death of Rinku, in the accident in question, does not minimize the extent of residue salary, coming into the hands of Usha Devi. Out of the residue amount of 2/3rd of the salary, learned Tribunal had granted only 1/3rd and had deducted 1/3rd on account of death of claimant's son Rinku. Unfortunately, son of the deceased namely Rinku had died in the same accident, which added to her agony, but on this count, the deduction, as such, cannot be made, solely on account of death of son also in the accident in question. As such, the appellant-claimant is entitled to grant of residue amount, after the deduction of the personal expenses of her husband. Thus, out of the total annual income of the deceased, after deduction of income tax, which comes to be Rs.91,504/-, 1/3rd is to be deducted, on account of personal expenses and residue comes to be Rs.91,504-30,501(1/3rd) = Rs.61,003/-.

Deceased Inder Singh is established to be 35 years old. In the given circumstances, the multiplier of '**13**', so applied by learned Tribunal, to work upon the compensation, is not appropriate. As per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the multiplier of '**16**' is to be applied. By applying this multiplier, the compensation, on the count of 'loss of dependency', comes to be Rs.61,003x16=Rs.9,76,048/-.

Besides the aforesaid, in ***Pranay Sethi's case (supra)***, the extent of consortium, which should be paid, was stated to be Rs.40,000/-, for the loss of estate, it was Rs.15,000/- as well as for the funeral expenses, it was Rs.15,000/-. However, in the said judgment, also it was held that the aforesaid amounts should be enhanced by 10% after every three years. At this time, the prevalent amount, on all the three aforesaid counts, is to the extent of Rs.44,000/-, Rs.16,500/- and Rs.16,500/-, in each of the conventional heads. Considering the same, the compensation payable to appellant-claimant Usha Devi, is re-appraised, as herein given:-

Loss of dependency	**:**	**Rs.9,76,048/-**
Loss of consortium	**:**	**Rs.44,000/-**
Loss of estate	**:**	**Rs.16,500/-**
Funeral expenses	**:**	**Rs.16,500/-**
Total	**:**	**Rs.10,53,048/-**

Now, coming to the compensation to be worked upon , vis-a-vis, FAO-1672-2003,, which relates to the death of Rinku, who was 6 years old child of Usha Devi.

Learned Tribunal, while considering the minimum compensation to be granted to the extent of Rs.50,000/-, in case of no fault liability, had given compensation to the extent of Rs.65,000/-, as lumpsum amount, on account of death Rinku. However, it should be noted that no reason, as such, has been assigned further for assessing this lumpsum amount.

It is pertinent to mention that Hon'ble Supreme Court in case titled as ***'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'***, while considering the death of a child, aged 10 years took the notional income of the deceased as Rs.30,000/- and applied multiplier of **'15'** and compensation came to be Rs.4.5 lakh. Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in that case, related to the year 1992.

Even, Hon'ble Supreme Court in case titled as ***"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021"*** was considering the case of death of 7 years old child, in a motor vehicular accident, which took place in the year 2004 and made certain observations, which are as under:-

> *"11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC 256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.*
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> *12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were*

issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company."

In view of the aforesaid observations, the Court took the notional income of the deceased child as Rs.25,000/- per annum and applied multiplier of '**15**' as prescribed in Schedule-II, for the claims under Section 163A of the Motor Vehicles Act, 1988 and worked upon the amount as Rs.3.75 lakh towards the loss of dependency. Besides the same, Rs.40,000/- each was given to the claimants, who were two in number, towards filial consortium and Rs.15,000/- was given towards funeral expenses. The total compensation was worked upon as Rs.4,70,000/-.

In the latest authority on the subject titled ***'Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553'*** the Hon'ble Supreme Court had considered the case of death of 12 years old child, in a motor vehicular accident and while granting compensation had observed that the principle laid down in case of ***Kishan Gopal's case (supra)***, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/- including future prospects and applying the multiplier of **'15'** in view of the decision of the Court passed in ***''Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77'***, the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made under conventional head and thus, the total compensation was worked upon as Rs.5,00,000/-

Considering the aforesaid, now reverting to the case in hand. Be it noted that the Insurance company had not challenged the Award. The accident in the case, in hand, had taken place on 17.07.1999 and also considering the date of death in ***Kishan Gopal's case (supra)***, the value of rupee has come down drastically.

Taking into consideration, all the aforesaid factors and also taking into consideration the fact that father of deceased Rinku, was working in Air Force, at the time of his death, therefore, the chances of placement of the deceased Rinku in life, were quite bright, the notional earnings, in the case, in hand, can safely be taken to be Rs.30,000/- per annum. Thus, considering the age of the deceased, the multiplier to be applied in the case, in hand, as per guidelines laid down in ***Sarla Verma's***

case (supra), is '**16**' and so calculating, the loss of dependency comes to be Rs.4,80,000/-.

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.

As per ***Pranay Sethi's case (supra)***, the amount payable, on account of loss of consortium is 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/-. However, as per aforesaid case, addition of 10% has to be made, in the aforesaid amounts, on each count. While taking it to be so, at the relevant time, the amount payable, on account of filial consortium, comes to be Rs.44,000/- and on account of loss of estate and loss of funeral, it comes to be Rs.16,500/- each. Considering the same, the compensation payable to appellant-claimant Usha Devi, on account of death of Rinku, is re-appraised, as herein given:-

Loss of dependency	**:**	**Rs.4,80,000/-**
Filial consortium	**:**	**Rs.44,000/-**
Loss of estate	**:**	**Rs.16,500/-**
Funeral expenses	**:**	**Rs.16,500/-**
Total	**:**	**Rs.5,57,000/-**

Learned Tribunal had granted the interest at the rate of 12% per annum from the date of filing of the petition till payment of the compensation. However, the interest rate has reduced drastically, hence thereafter. Keeping in view the same, for the enhanced amount, the appellant-claimant shall be entitled to the interest, at the rate of 8% per annum, from the date of filing of the appeal, till realization of the enhanced amount. The payment of the enhanced compensation along with interest, as now worked upon, shall be made to the appellant-claimant, within a period of six weeks.

In view of the aforesaid terms, both the appeals stand allowed. The impugned Award dated 13.01.2003 stands modified, to the extent, as indicated aforesaid.

April 10, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**