2023:PHHC:126568

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3549-2002 (O&M)
Date of Decision: August 24, 2023

Ramwati and others

...Appellants

VERSUS

Om Parkash and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Mayank Gupta, Advocate
for the appellants.

Mr.Sandeep Kotla, Advocate
for respondent No.2.

Mr.D.P.Gupta and Mr.Shubham Gupta, Advocates
for respondent No.3.

****

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants i.e. widow and minor children of deceased Prem Kumar, thereby, seeking enhancement of the compensation, so awarded by learned Motor Accident Claims Tribunal, on account of death of Prem Kumar, in a motor vehicular accident, which took place on 04.07.1998.

On appraisal of the evidence brought on record, learned Tribunal had granted compensation, to the extent of Rs.3,88,400/- to the appellants-claimants.

So far as, fact of accident and manner of taking place of the same as well as the fact of death of Prem Kumar, in pursuance of the injuries sustained in the accident, which took place on 04.07.1998, is concerned, none of the parties, who have been made liable, have filed the appeal, to challenge the findings, so recorded by learned Tribunal. In the given circumstances, the findings, have since attained finality.

So far as, quantum of compensation is concerned, on appraisal of the evidence, brought on record, learned Tribunal, while considering the age of deceased Prem Kumar to be 45 years and taking his earnings as Rs.4,000/- per month and making deduction to the extent of 1/3rd on account of personal expenses, worked upon the compensation as Rs.3,56,400/-. Besides the same, compensation was granted to the extent of Rs.10,000/- each, on the count of 'pain and agony', 'loss of consortium' and 'expenses incurred, on account of treatment'. Also, a sum of Rs.2,000/- was granted, on account of expenses incurred on cremation. Thus, the total compensation worked upon as Rs.3,56,400+32,000=Rs.3,88,400/-.

Definitely, the compensation, so worked upon by learned Tribunal calls for re-appraisal, as per settled prevalent law.

Deceased Prem Kumar was working as Sweeper in Municipal Council, Hansi. PW-1 Om Parkash, Clerk, Municipal Council, Hansi, had brought the summoned record and deposed about avocation, so followed by deceased Prem Kumar and also deposed that at the time of his death on 17.07.1998, his basic pay was Rs.1010/- plus usual D.A. Even, PW-3 Ramwati, who is the wife of the deceased, also deposed about the avocation of the deceased and also deposed about his monthly salary to be Rs.4,000/-

and she also deposed that the age of the deceased Prem Kumar was 45 years, at the time of his death.

Considering it to be so and taking the salary to be Rs.4,000/- per month, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 30% is to be made, on account of future prospects. Taking it to be so, the amount of earnings, comes to be Rs.4000+1200(30%)=Rs.5200/-. However, considering the number of dependents of the deceased to be '6', who are widow and children, the deduction on the count of personal expenses, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, ought to be 1/4th, instead of 1/3rd, as applied by learned Tribunal. Thus, after deducting 1/4th, the monthly dependency, as such, works out to be Rs.5,200-1,300=Rs.3,900/- and the annual dependency works out to be Rs.46,800/-.

Considering the age of the deceased, as per the Sarla Verma's case, the appropriate multiplier to be applied is '**14**', instead of '**11**' as applied by learned Tribunal. Thus, while applying the same, the loss of dependency works out to be Rs.46,800x14=**Rs.6,55,200/-**.

Besides the aforesaid, on the count of loss of consortium, funeral expenses etc., the compensation granted is on lower side.

The amounts are to be paid under the conventional heads, such as, loss of consortium, loss of estate 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 and the dependents are entitled to compensation, on the count of ‘parental’, ‘spousal’ and ‘filial’ consortium, which view, has been further endorsed 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)***, with clause of 10% enhancement, after three years from the passing of the judgment, which has since passed by, the amount payable, on the count of ‘**loss of consortium**’ is to extent of **Rs.44,000/-** to each of the claimants, which comes to be Rs.44,000x6=**Rs.2,64,000/-** 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 appellants-claimants, on account of death of Prem Kumar, is re-computated, as herein given:-

Loss of dependency	:	**Rs.6,55,200/-**
Loss of consortium	:	**Rs.2,64,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.9,52,200/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.9,52,200-3,88,400=Rs.5,63,800/-**.

However, it is pertinent to mention that apportionment of the compensation, already awarded, has not been worked upon by learned Tribunal. In the given circumstances, out of the total compensation as now enhanced i.e. Rs.9,52,200/-, appellant-claimant No.1 is held entitled to Rs.4,52,200/- and appellants-claimants No.2 to 6, are held entitled to Rs.1 lakh each. The compensation is already paid to the appellants-claimants, shall be deducted from the amounts, as now apportioned.

On the enhanced amount of the compensation i.e. **Rs.5,63,800/-**, the appellants-claimants 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.

Proceeding further, it should be noted that in the impugned Award, on account of there being violation of terms and conditions of the insurance policy Ex.R1, learned Tribunal had exonerated the insurance company from making payment of the compensation to the appellants-claimants. However, the fact of the offending vehicle being insured with the insurance company, at the relevant time, is not disputed.

In the light of the same, the compensation, as such, cannot be denied to the appellants-claimants, from the insurance company, at first instance. However, on the account of fault, on the part of the insured, the insurer is entitled to recovery rights against the owner and driver of the offending vehicle. As such, the insurance company is also made liable jointly and severally, together with the driver and owner of the offending vehicle.

The impugned Award dated 16.10.2000 stands modified, to the extent, as indicated aforesaid.

With the above observations, the present appeal stands allowed.

August 24, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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