IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2843-2007 (O&M)
Date of Decision: February 22, 2023

Jagmati and others

...Appellants

VERSUS

Rajender Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.B.S.Bairagi, Advocate
for the appellants.

Mr.Sandeep Suri, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 03.02.2007 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the appellants-claimants, on account of death of Naresh Kumar, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award, had granted compensation to the extent of Rs.3,39,000/- to the appellants-claimants. Even, the respondents i.e. driver, owner and insurance company, were held liable jointly and severally to pay the compensation.

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants have filed the present appeal, thereby, seeking extensive enhancement of the compensation.

So far as, the fact of accident and manner of its taking place are concerned, the same, as such, have not been disputed at this stage. No step has been initiated by the respondents to dispute the liability fastened upon them, to pay the compensation, so granted by the Tribunal.

In this backdrop, at the very outset, learned counsel for the appellants has submitted that the compensation granted by the Tribunal is on lower side. In fact, it is submitted that deceased Naresh Kumar was working as truck driver and was earning Rs.5,500/- per month. However, learned Tribunal had wrongly assessed the income of the deceased to be Rs.2,400/- per month. Consequently, the compensation, so worked upon, is on lower side. Moreover, it is submitted that appellants are also entitled for the addition to be made on account of future prospects. Furthermore, it is submitted that on account of loss of consortium, only appellant No.1-Jagmati has been held entitled to sum of Rs.5,000/-. However, as per the prevalent law, it is submitted that all the appellants-claimants are entitled to '**spousal**', '**filial**' and '**parental**' consortium and that too, to the extent of Rs.44,000/- each. Also, it is submitted that on account of compensation granted on the aspect of funeral expenses and transportation is also on lower side. As such, a prayer has been made for extensive enhancement of the awarded amount.

On the contrary, learned counsel for the insurance company has assiduously resisted the claim of the appellants-claimants. He submits that looking at the date of accident and the evidence, coming on record, the amount of earnings of the deceased have been adequately worked upon and the compensation, so granted, is just and reasonable. As such, it is submitted that the appeal sans merit and thus, a prayer has been made for dismissal of the same.

From the evidence adduced, it stands established that deceased Naresh Kumar, was working as driver. Jagmati, widow of Naresh Kumar has categorically deposed about her husband to be driver by profession and was employed on the truck of Ramesh Chand, resident of Barwala. Said Ramesh Chand has also been examined as PW-4, who is the registered owner of the truck bearing registration No.HR-39-7187. He has also deposed about the employment of deceased Naresh Kumar as driver on his truck. Though, the appellants had asserted the extent of earnings of the deceased to be Rs.5,500/- per month, but however, Ramesh Kumar, who was the employer of the deceased Naresh Kumar, has stated about the salary of the deceased, to be Rs.3,000/- per month, besides, outstation allowance. However, no salary slip, as such, has come on record and even, there is no evidence, relating to the outstation allowance, so paid by the employer of the deceased. Learned Tribunal had considered the earnings of the deceased to be Rs.2,400/- per month. However, this is on lower side. Considering the date of accident and also about the deceased to be skilled worker, his earnings in modest estimate, can conveniently be taken to be Rs.2,800/- per month. Considering it to be same, now it is pertinent to mention that the learned Tribunal had made deduction of 1/3rd of the income, on account of personal expenses. However, the number of dependents upon the deceased, are four. Thus, in view of ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction ought to be made, to the extent of 1/4th instead of 1/3rd. As such, after making deduction of 1/4th, the loss of dependency comes to be Rs.2,100/- per month.

No specific evidence regarding date of birth of the deceased has been proved. However, it is the assertion of the appellants-claimants that the age of the deceased was 25 years. However, in the post-mortem report, the age of the deceased is stated to be 25-30 years. Taking it to be so, now, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of future prospects, has to be made, to the salary, so worked upon. Considering the age of the deceased, 40% addition has to be made as future prospects and thus, the amount comes to be Rs.2100+840(40%)=Rs.2940/- per month. Therefore, annual dependency comes to be Rs.2940x12=Rs.35,280/-. The suitable multiplier, as per ***Sarla Verma's case (supra)***, is '**17**', instead of '16, as so applied by learned Tribunal. Thus, after applying the multiplier of '17', the loss of dependency comes to be Rs.35,280x17= Rs.5,99,760/-.

Besides the aforesaid, it is pertinent to mention that in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and ***United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410***, it has been laid down by the Hon'ble Supreme Court that consortium is not limited to '**spousal consortium**' and it also includes '**parental consortium**' and '**filial consortium**'. It was held that apart from spousal consortium, 'parental' and 'filial' consortium is also payable. Endorsing this view, in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

In ***Pranay Sethi's case (supra)***, the extent of consortium which should be paid is stated to be Rs.40,000/- to each of the claimant and for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, appellants-claimants, are entitled to compensation, on the count of '**loss of consortium**' to the extent of Rs.44,000/- each. Besides the same, they are also entitled to Rs.16,500/- as '**loss of estate**' and Rs.16,500/- as '**funeral expenses**'.

Thus, loss of dependency comes to be Rs.5,99,760/-, loss of consortium comes to be Rs.1,76,000/- (Rs.44,000/- to each of the appellant) Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.8,08,760**/-.

However, in the impugned Award, the apportionment of the award amount, as such, has not been made. Hence, the same is now made. Out of the compensation, so now awarded, a sum of Rs.4,08,760/- shall be paid to appellant-claimant No.1-Smt.Jagmati; a sum of Rs.1.5 lakh each shall be paid appellant-claimants No.2 and 3, namely Rahul and Sonia and Rs.1 lakh, shall be paid to appellant-claimant No.4-Smt.Phoolpati. Any amount earlier paid, shall be adjusted from the aforesaid amount. The interest component, shall remain the same, as ordered by learned Tribunal.

With the above observations, the present appeal stands allowed.

February 22, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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