IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2563-2008 (O&M)
Date of Decision: December 18, 2023

Chameli Mittal and another

...Appellants

VERSUS

M/s Chahal Bus Service and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kamal Sehgal, Advocate
for the appellants.

Mr.R.K.Girdhar, Advocate
for respondent No.1.

None for respondent No.2.

Mr.Lalit Garg, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants Chameli Mittal and Monika Mittal, at first instance, thereby, seeking enhancement of the compensation awarded by learned Tribunal, on account of death of Jagdish Rai Mittal, in a motor vehicular accident, which took place on 13.07.2005.

At the very outset, it is pertinent to mention that during the pendency of the appeal, Rajiv Mittal, son of deceased had also filed an application under Order 1 Rule 10 CPC, which was allowed and had, thereafter, joined the proceedings, vide separate order of even date.

On appraisal of the evidence, brought on record, learned Tribunal had granted compensation to the appellants-claimants to the extent of Rs.5,01,784/-, on account of death of Jagdish Rai Mittal.

So far as, the fact of accident and manner of taking place of the same, as well as the liability fastened upon the respondents, is concerned, suffice to make mention that, none of the persons, who have been so made liable, have filed any appeal and as such, this aspect, does not warrant further scrutiny.

In the present appeal, it was only the insurance company, who had made appearance through counsel.

From the evidence on record, it stands established that the deceased was working with The Punjab Scheduled Castes Land Development and Finance Corporation and, at the relevant time, he was posted as District Manager, Mansa. Also, it stands established that he was drawing the salary of Rs.24,672/- per month, at the time of accident and his date of birth is established to be 03.07.1948. The salary certificate of the deceased for the month of July 2005, is Ex.P5. Also, form No.16 relating to the period 01.04.2004 to 31.03.2005 for the assessment year 2005-2006 has come on record, which reveals about the detail of the salary paid and the tax deducted. From the recitals of form No.16, it is evident that the tax on total income was Rs.37,068/-, which approximately, comes to be Rs.3,090/- per month. After making said deduction, the monthly income, works out to be Rs.21,672/-.

However, considering the age of the deceased, the multiplier of '8', was applied by learned Tribunal, for working upon the compensation, for a period of one year, in one block and for subsequent seven years, it was worked upon as Rs.3,03,408/-, in the second block, i.e. after the retirement. Besides the same, Rs.15,000/- was granted, towards 'loss of consortium' and Rs.10,000/- was granted, on the count of 'last rites' and thus, the total compensation was worked upon as Rs.5,01,748/-.

However, the compensation, so awarded by learned Tribunal calls for re-computation, as per prevalent settled law.

In these circumstances, proceeding further to re-appraise the earnings of the deceased.

At the very outset, it is pertinent to mention that learned counsel for the insurance company has resisted the claim for compensation, at the instance of Rajiv Mittal, whom he states that he is Chartered Accountant and as such, was not dependent upon the deceased. However, the aforesaid submission is not tenable. In our Indian society, it is not always the financial dependency of the children upon the parents, but, besides the same, there is also emotional dependency of the parents, upon the children and vice-versa. Considering the same, Rajiv Mittal, son of the deceased is also entitled to compensation.

Keeping in view the date of birth of deceased Jagdish Rai Mittal to be 03.07.1948, it becomes evident that the he was 57 years old, at the time of death, in the accident in question. Also, keeping in view the avocation, so followed by the deceased, it is evident that he was to retire after one year of the service. In the given circumstances, when the date of accident is too near to the retirement, it shall be appropriate to split the multiplier for one year and seven years'. However, keeping in view the age of the deceased, as per ***Pranay Sethi's case***, addition of 15% ought to be made, on the count of 'future prospects'. Making it to be so, after doing deduction of income tax, the income of the deceased is worked upon as Rs.21672+Rs.3250(15%)=**Rs.24,922/-**.

Considering the total number of dependents upon the deceased, as per ***Sarla Verma's case,*** the deduction has to be made to the extent of 1/3rd, on account of personal expenses. Thus, making this deduction of 1/3rd, the loss of dependency comes to be Rs.24922-8307(1/3rd)= Rs.16,615/-, annual whereof, comes to be Rs.16615x12=Rs.1,99,380/-.

Thus, the compensation, for one year works out to be **Rs.1,99,380/-**.

After retirement of the deceased, the earnings of the deceased would be reduced to half. After making such deduction, it shall be Rs.24,922-50%=Rs.12,461/-. Out of the same, on account of personal expenses, 1/3rd is to be deducted, which is to the extent of Rs.4,153/- and thus, the incomes comes to be Rs.8308/- per month, annual whereof, comes to be **Rs.99,696/-**.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**9**' and by applying the same, the loss of dependency, works out to be **Rs.8,97,264/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral

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expenses as held in ***Pranay Sethi's case (supra)***. However, 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 were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the appellant-claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to dependents, on account of death of Jagdish Rai Mittal, is re-computated, as herein given:-

Loss of dependency (for one year)	:	**Rs.1,99,380/-**
Loss of dependency (after retirement)	:	**Rs.8,97,264/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.12,29,744/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.12,29,744-5,01,784=Rs.7,27,960/-**. On the enhanced amount of the compensation i.e. **Rs.7,27,960/-**, 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. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

Appellant-claimant Chameli Mittal has since died. Both the remaining appellants i.e. Monika Mittal and Rajiv Mittal, who are daughter and son, have inherited her estate and are the legal heirs of Chameli Devi. Considering the same, out of the enhanced amount, in their own capacity and in the capacity of being legal heirs, they are now entitled to enhanced compensation, in equal shares. However, relating to the apportionment of the amount, as worked upon by learned Tribunal, Rajiv Mittal shall be entitled to the half out of share of compensation falling to Chameli Mittal, if not disbursed.

In view of the aforesaid terms, the present appeal stands allowed.

December 18, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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