2023:PHHC:062758

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5913-2011 (O&M)
Date of Decision: May 01, 2023

Santosh and others

...Appellants

VERSUS

Gulshan Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr.Puneet Jain, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation, granted, on account of death of Hanuman, in a motor vehicular accident, which took place on 18.05.2010.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award, had granted compensation to the extent of Rs.4,38,000/- to the appellants-claimants, who are widow and children of the deceased.

So far as, the fact of accident and manner of its taking place, is concerned, suffice to make mention that the persons, so made liable to pay the compensation, have not challenged the liability, so fastened upon them.

In this backdrop, learned counsel for the appellants has

assiduously submitted that learned Tribunal has erroneously considered the earnings of the deceased as Rs.4,500/- per month, which is contrary to the evidence, as such, brought on record by appellants-claimants. Even, further, it has been submitted that keeping in view the dependents to be four, the deduction, on account of personal expenses, ought to have been made, to the extent of 1/4th, instead of 1/3rd. Even, the multiplier, so applied, should have been '13', as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, instead of '12'. Thus, it is submitted that computation of compensation, so worked upon, while considering aforesaid factors, is definitely on the lower side. Besides the same, the compensation ought to be paid under the conventional heads, as per the settled law now.

Thus, learned counsel for the appellants made a prayer for extensive enhancement of the compensation.

On the contrary, learned counsel for the Insurance Company has resisted the claim of the appellants. He submits that the compensation, so worked upon, is just and reasonable, while considering the evidence, so brought on record. Thus, he submits that the appeal sans merit and the same deserves to be dismissed.

However, in view of the submissions, so made, it is pertinent to mention that as per the version of the appellants-claimants, in the claim petition before learned Tribunal, the deceased Hanuman was working as Furnace Operator in Jardia Pipe (India) Ltd. and earning Rs.7000/- per month. It was further asserted that deceased was keeping two buffaloes and managing 6 Kanals of land and use to sell the milk and from this profession, in total, he was earning Rs.12,000/- per month.

To establish about the avocation, so followed by the deceased Hanuman, the appellants-claimants have examined PW-4 Rajender Kumar Aggarwal, Manager, Jardia Pipe Limited. On the basis of the record, brought by him, he deposed about Hanuman to be working in their factory as Furnace Operator and he worked till 17.05.2010 and was getting salary of Rs.5000/- + Rs.1500/- as house rent and Rs.500/- as conveyance allowance, per month. He proved the wages slip Ex.P15. As per the said slip, the salary for 17 days in the month of May 2010, was to the extent of Rs.4402/-, which was disbursed to the deceased.

To counter the aforesaid evidence, respondents have examined RW-1 Sanjeev, Accounts Officer, Jardia Pipe Limited, who proved the receipts regarding wages from February 2010 to June 2010, which are Ex.R1 to Ex.R5. On the basis thereof, it is submitted that, the earnings of the deceased were not so, as claimed by the appellants-claimants. However, the wages slips, which had been proved by the respondents, Ex.R1 to Ex.R3, were for the month of February, March and April 2010. However, the wages slip, so proved by the appellants-claimants is Ex.P15. It clearly shows that an amount of Rs.4,402/- was paid as wages for 17 days. The wages for the month of May 2010, was stated to be Rs.5000/- + Rs.1500/- HRA and Rs.500/- conveyance allowance. Considering this wages slip to be the last one, which related soon before the death of Hanuman, ought to be taken into consideration.

So far as, indulgence of the deceased in taking care of two buffaloes, sale of milk and following the agricultural pursuit is concerned, rightly, it has been concluded that no satisfactory evidence, as such, has

come on record.

In the given circumstances, when the wages of Rs.4,402/- was for 17 days, it cannot, in any manner, be concluded that salary of the deceased as Rs.4,500/- per month. In view of the recitals of wage slip Ex.P15, it stands established that the salary of the deceased was **Rs.7000/-** per month.

Considering it to be so, the deduction has to be made, on account of personal expenses. Even though, the deduction has been made to the extent of 1/3rd by learned Tribunal, but considering the number of dependents to be four in number, the deduction ought to be 1/4th. Making it to be so, the monthly dependency is worked upon as **Rs.7000-1750(1/4th)=Rs.5,250/-**.

As per the birth certificate Ex.P13, the date of birth of the deceased was 25.05.1960. The accident had taken place on 18.05.2010. Therefore, the deceased was **49 years 11 months and 23 days old**.

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 earnings, so worked upon. Considering the age of the deceased, **25%** addition has to be made as future prospects and thus, the amount comes to be **Rs.5250+1312(25%)=Rs.6562/-** per month. Therefore, annual dependency comes to be **Rs.6562x12=Rs.78,744/-**. The suitable multiplier, as per ***Sarla Verma's case (supra)***, is '**13**', instead of '**12**', as so applied by learned Tribunal. Thus, after applying the multiplier of '**13**', the loss of dependency comes to be **Rs.78,744x13= Rs.10,23,672/-**.

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.10,23,672/-, 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.12,32,672**/-.

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.12,32,672-4,38,000 =Rs.7,94,672/-**.

The amount of compensation already granted vide impugned Award shall be apportioned, as ordered by learned Tribunal. However, out of the enhanced compensation, so now awarded, a sum of **Rs.4,94,672/-** shall be paid to appellant-claimant No.1-Santosh and a sum of **Rs.1 lakh** each, shall be paid to appellants-claimants No.2 to 4, namely Suryakant, Pooja and Ritu. Keeping in view the interest rates, having been reduced drastically, on the enhanced amount of the compensation i.e. **Rs.7,94,672/-**, 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.

Accordingly, the impugned Award dated 29.03.2011 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same.

With the above observations, the present appeal stands allowed.

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

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