2023:PHHC:131678

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2392-2012 (O&M)
Date of Decision: October 09, 2023

Bhupinder Kaur and others

...Appellants

VERSUS

Devinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.N.K.Verma, Advocate
for the appellants.

Mr.Mohnish Sharma, Advocats
for respondents No.1 and 2.

Mr.Rajesh Bansal, Advocates
for respondent No.3.

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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 Meet Singh, in a motor vehicular accident, which took place on 27.07.2007.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 09.04.2011, had granted compensation to the extent of Rs.3,71,400/- to the appellants-claimants, who are widow, sons and mother 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. Hence, this issue does not warrant any further scrutiny.

In this backdrop, learned counsel for the appellants has assiduously submitted that learned Tribunal has erroneously overlooked the fact of the deceased to be working as Palledar and also following the avocation of agriculture and dairy farming. Also, it is submitted that it is categoric case of the appellants about the deceased to be working as Pelledar (Helper) in FCI Depot, Khamano and was also indulging into sale of milk of eight buffaloes and thus, earning Rs.5,000/- from FCI and another Rs.6000-Rs.9000/- from sale of milk. However, it is submitted that erroneously, learned Tribunal had considered the earnings of deceased as Rs.3,000/- from his employment as 'Palledar' and only Rs.1,000/- has been taken as value of services, so far as, indulgence of the deceased, in the sale of milk is concerned.

In the light of the same, it is submitted that the earnings have been taken on a lower side and as a result thereof, the compensation, so worked upon, is quite meagre. Besides the same, even it is submitted that no amount has been worked upon, on the count of 'future prospects' and also under the conventional heads, the amount, so granted, is on a lower side.

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

On the other hand, learned counsel for the Insurance Company has submitted that looking at the scanty evidence, coming on record, the compensation, so worked upon is just and reasonable and the same does not call for further enhancement. 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 in the claim petition, it is specific claim of the appellants-claimants that the deceased was working as 'Palledar' in FCI, Khamano and was earning Rs.5,000/- per month, from the said source. Besides the same, he was earning Rs.6,000-9000/-, from the sale of milk of eight buffaloes. To so substantiate the avocation followed by the deceased, widow of the deceased namely, Bhupinder Kaur had stepped into witness box as PW-1 and in her affidavit Ex.PW1/A, has categorically stated about the avocation, so followed by the deceased and also about the extent of his earnings, so pleaded in the claim petition. Besides the same, Gurcharan Singh, one of the sons of the deceased had also stepped into witness box as PW-3 and in his affidavit Ex.PW3/A has also deposed, in consonance with the pleaded case.

However, the earnings of the deceased have been taken as Rs.3,000/- per month, while considering the wage certificate Ex.C3, which makes mention of the extent of earnings, as depicted in the month of October as Rs.2855/-, in the month of November as Rs.1690/- and in the month of December as Rs.8113/- Similarly, it was observed by learned Tribunal about various amounts for the month from January to May, July and August, to be ranging from Rs.2089/- to Rs.7869/-. Considering the varying amounts, so worked upon, the earnings of the deceased from his indulgence as 'Palledar', as taken by learned Tribunal as Rs.3,000/- per month, is just and reasonable, which calls for no interference.

From the evidence, brought on record, it stands substantiated that the deceased was indulging in sale of milk also. It is coming in evidence about the deceased to be having eight buffaloes, at the relevant time. Considering it to be so, the value of services, rendered by the deceased towards attending of the domestic animals, which was taken as Rs.1,000/-, is definitely, on a lower side. In the fitness of the circumstances, so spelt out and considering the number of heads of domestic animals, this amount of value of services for looking after the milk giving animals, is taken as Rs.1,500/- per month.

Thus, the total monthly earnings of the deceased works out to be **Rs.4,500/-**.

However, considering the evidence, brought on record, learned Tribunal had worked upon the earnings of the deceased as Rs.3,000/- per month as 'Palledar' and Rs.1,000/- as value of services and thus, worked upon the compensation, as follows:-

Loss of dependency	:	**Rs.4000/- per month**
Deduction on the count of personal expenses	:	**Rs.4000-1/3rd=Rs.2700/-**
Annual loss of dependency	:	**Rs.2,700x12=Rs.32,400/-**
Multiplier of '11' applied	:	**Rs.32,400x11=Rs.3,56,400/-**
Funeral expenses	:	**Rs.5,000/-**
Loss of consortium	:	**Rs.10,000/-**
Total	:	**Rs.3,71,400/-**

As, now the monthly earnings of the deceased are held to be taken as **Rs.4,500/-** per month, the compensation, so worked upon by learned Tribunal, requires re-computation, not only on this count, but also, on various other counts, such like, 'future prospects' and other conventional heads etc.

From the evidence adduced, it stands established that the deceased about 55 years, at the time of accident. It has been so admitted by widow of deceased PW-1 Bhupinder Kaur, while facing cross-examination. Considering his age, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, on account of 'future prospects' addition of 10% has to be made. Taking it to be so, the monthly earnings of the deceased works out to be Rs.4,500+450(10%)=Rs.4950/-.

However, looking that at the number of appellants-claimants, who are widow, sons and mother of the deceased, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, deduction on the count of 'personal expenses' has to be made to the extent of 1/4th, instead of 1/3rd, as taken by learned Tribunal. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.4950-1237(1/4th)=Rs.3713/- and annual dependency comes to be Rs.3713x12=**Rs.44,556/-**.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)*** the appropriate multiplier to be applied is '11'. Thus, after applying the multiplier of '11', the loss of dependency comes to be **Rs.44,556x11= Rs.4,90,116/-**.

Besides the same, the amounts are to be paid under the conventional heads, namely, 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 were 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)***, after making addition of 10%, 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 claimant 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 dependents, on account of death of Meet Singh, is re-computated, as herein given:-

Loss of dependency	:	**Rs.4,90,116/-**
Loss of consortium	:	**Rs.2,20,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.7,43,116/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.7,43,116-3,71,400=Rs.3,71,716/-**.

Out of the enhanced compensation, as now awarded, appellant-claimant No.1-Bhupinder Kaur is held entitled to Rs.1,50,000/- and appellants-claimants No.2 to 4 are held entitled to Rs.50,000/- each and appellant-claimant No.5-Ind Kaur, is held entitled to Rs.71,716/-.

On the enhanced amount of the compensation i.e. **Rs.3,71,716/-**, 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 impugned Award dated 09.04.2011 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

October 09, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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