2023:PHHC:137205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-6795-2011 (O&M) and XOBJC-24-CII-2013

Seema Rani and others

...Appellants

VERSUS

Surinder Singh and others

...Respondents

(ii) FAO-2865-2012 (O&M) and XOBJC-172-CII-2014

Suman Sharma and others

...Appellants

VERSUS

Surinder Singh and others

...Respondents

Date of Decision: October 19, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rupender Rana, Legal Aid counsel
for appellants No.2 to 5 (in FAO-6795-2011).

Mr.Krishan Singh, Advocate,
for the appellants (in FAO-2865-2012).

Ms.Husnpreet Kaur, Advocate for
Mr.Vishal Gupta, Advocate
for respondents No.1 and 2.

Mr.Subhash Goyal, Advocate
for respondent No.3 and cross-objectors.

Mr.Punit Jain, Advocate
for respondent No.5.

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ARCHANA PURI, J.

These are two appeals, filed by the appellants-claimants, thereby, seeking enhancement of the compensation, granted by learned Motor Accident Claims Tribunal, on account of death of Vinod Kumar and Viney Sharma, in a motor vehicular accident, which took place on 21.04.2010.

FAO No.6795-2011 has been filed by widow, children and parents of deceased Vinod Kumar, who was occupant of the car bearing registration No.CH-04L-1552, at the time of accident.

FAO-2865-2012 has been filed by widow and children of deceased Viney Sharma, who was driving the ill-fated car bearing registration No.CH-04L-1552, at the time of accident.

Besides the same, even, cross-objections have been filed in both the aforesaid appeals by the insurer of the offending truck bearing registration No.HR-58A-6577, thereby, asserting about deceased Viney Sharma, who was driver of the car involved in the accident, to have also contributed towards taking place of the accident.

At the very outset, it is pertinent to mention that at first instance, qua death of Vinod Kumar, claim petition for seeking compensation was filed by widow Seema Rani, children and parents of the deceased. Even, compensation was granted to all the aforesaid claimants. FAO-6795-2011 was also filed by the aforesaid claimants. However, during the pendency of the appeal, an application was filed by parents as well as children of deceased Vinod Kumar, thereby, seeking deletion of name of appellant No.1, widow of Vinod Kumar, from the array of parties, as she had re-married.

Though, there is no satisfactory evidence, coming on record, with regard to the re-marriage of Seema Rani, but however, at the time, when the Award was passed, she was widow of deceased Vinod Kumar. It is asserted that she has re-married, during the pendency of the appeal. Even though, it has been submitted that Seema Rani has re-married, after death of Vinod Kumar, during the pendency of the present appeal, but however, the fact remains that she was widow of Vinod Kumar, when the proceeding were pending before learned Tribunal. Even though, the fact of re-marriage as such, does not stand established, but however, the re-marriage of the widow will not deprive her of the compensation, which was awarded by learned Tribunal.

But anyhow, notice of the aforesaid application was issued to Seema Rani and she was duly served through her father, but despite the same, she did not make appearance. Meaning thereby, she is satisfied with the compensation, already granted to her and has abandoned her right in the appeal. Therefore, FAO-6795-2011 stands dismissed qua appellant No.1-Seema Rani, for want of prosecution.

The essential facts, to be noticed, are as follows:-

That, on 21.04.2010, car bearing registration No.CH-04L-1552, was driven by Viney Sharma (since deceased) and it was proceeding towards Chandigarh. Vinod Kumar (since deceased) and his uncle Atam Parkash were occupants of the said car. At about 5.00 a.m., when they reached in the area of village Hamidpur, District Ambala, then a truck bearing registration

No.HR-58A-6577 was parked on the road, in a negligent manner, without any indication and because of wrong parking, the driver of the car could not see the stationary truck and their car struck against the said truck from behind. As a result of the accident, the occupants of the car i.e. Viney Kumar and Vinod Kumar, sustained multiple injuries and they were taken to M.M. Medical College, Mullana, where, Vinod Kumar had died and Viney Sharma was referred to PGI, Chandigarh, but however, he had died on the same very day. FIR No.76 (Ex.P4) dated 21.04.2010 was registered under Sections 283, 337 and 304-A IPC, Police Station Mullana, at the instance of Atam Parkash, who was one of the occupants of the ill-fated car. Besides the same, in the respective claim petitions, various assertions were made, with regard to age, avocation, income of both the deceased and extent of dependency of the claimants, upon the deceased.

Qua death of Vinod Kumar, Rs.1 crore was claimed as compensation, whereas, qua death of Viney Sharma, the claimants have claimed compensation to the extent of Rs.20 lakh.

In reply, respondents No.1 and 2 have denied the involvement of the truck in question in the accident and it was averred that false FIR has been registered involving the truck in question as well as respondent No.1.

Respondent No.3-insurer of the truck in question, had also, in its separate reply, denied about the factum of the accident and involvement of the truck in question in the accidents. Besides the same, various other objections were taken, with regard to the violation of the insurance policy. In the alternative, it was averred that the driver of the car had contributed in causing of the accident in question. Likewise, respondent No.4-owner of the car involved in the accident, had also pleaded about the accident to have taken place, on account of wrong parking of the truck in question. Similar plea was also taken by the respondent No.5, who was insurer of the car in question. Besides the same, it was also pleaded that the car in question, at the relevant time, was being driven in violation of the terms and conditions of the insurance policy, as the driver of the car was not holding valid and effective driving licence and thus, made a prayer for exoneration of the insurance company to pay the compensation, if so assessed.

As both the claim petitions had arisen from same accident, they were consolidated and various issues were framed and evidence was adduced by the parties to the lis.

After recording of the evidence, learned Tribunal had reached the conclusion that respondent No.1-Surinder Singh, who was driver of the offending truck, was solely responsible for causing the accident in question and hence, issue No.1 and 2 relating to the factum of accident and question of negligence, were decided against respondent No.1. Thereupon, taking into consideration of the age of both of the deceased and avocation followed by them, learned Tribunal had granted compensation to the extent of Rs.6,55,000/-, in the claim petition, relating to the death of Viney Sharma. Even, compensation to the extent of Rs.36,47,344/- was granted in the claim petition, relating to the death of Vinod Kumar. Further, learned Tribunal had also given the detail of manner of disbursement of the compensation amount.

Feeling aggrieved by the extent of compensation granted by learned Tribunal, the appellants-claimants of both the claim petitions, have filed the respective appeals, detail whereof, has been given in the earlier portion of the judgment. Even, cross-objections were filed by the insurance company, thereby, taking the plea of contributory negligence, on the part of the driver of the car, involved in the accident, namely Viney Sharma, who had also died in the accident in question.

Learned counsel for the parties heard.

To substantiate the factum and manner of accident, the appellants-claimants examined PW-3 Atam Parkash, who was one of the occupants of the ill-fated car, at the time of accident. In the affidavit Ex.PW3/A, the said witness has categorically stated that on 21.04.2010, he was accompanying his nephew Vinod Kumar to Chandigarh, in car bearing registration No.CH-04L-1552, which was driven by Viney Kumar Sharma at a slow speed. He also deposed that around 4.45-5.00 a.m., when they reached near Raju Dhaba, Ambala Road, Saha, then a truck bearing No.HR-58A-6577 was stationed half on the road portion, without any indication. He further deposed that due to darkness and reflection of the headlights of the other traffic moving on the road, their car could not notice the stationary struck and the same led to the accident. He stated about death of Vinod Kumar and Viney Sharma, on account of injuries sustained in the said accident. He further deposed that FIR Ex.P4 was registered on the basis of his statement at Police Station Mullana.

Though, the said witness had been subjected to lengthy cross-examination, but nothing material, to controvert his testimony, as such, has come on record. Even though, as observed in the impugned Award, submission has been made about there to be no traffic on the road and view of the car was not obstructed, as there was no curve, but however, it matters not much. It is pertinent to mention that accident had taken place in wee hours, in the month of April and sunrise, during this month of the year, usually take place in this part of the country at around 6.00 a.m. It is specifically asserted by this witness about the truck to be not visible, because of darkness and there being no indicators. This is all the more essential to note, in the backdrop of respondents, having denied the accident in toto and the driver of the truck, namely, Surinder Singh having remained away from the witness box. He had not come forward to assert about the accident having not taken place, on account of his vehicle having parked in the manner, as asserted by the claimants.

It is specific claim of the appellants-claimants that accident had taken place because of negligence on the part of driver of the truck, who failed to observe the rules, viz-motor vehicle rules and had parked the truck, in a careless manner on a highway.

There is no material or evidence, on behalf of the respondent, to show about the truck to have been parked away from the road, without any hindrance to the free flow of the traffic. In the absence of any such indicators or danger light or parking light to be 'ON', it is apparent that the driver of the car did not notice the parked truck and therefore, when he came near the parked truck, he did not having sufficient time to respond and reduce the speed, so as to avert the accident. Such evidence, led by PW-3 Atam Parkash, has not been controverted. Moreover, Surinder Singh, who was best person to dispute the version of the claimants, had denied the accident in toto, in his reply. Even, the owner of the truck, had also so denied. But however, Surinder Singh, despite there being an opportunity, had not stepped into witness box, to counter the version of the claimants. The occurrence does not appear to be due to fault on the part of deceased Viney Sharma, who was driving the car in question, at the relevant time, firstly, on account of truck having parked on the road and more particularly, when the parking lights, which were required as per rules, were not 'ON' and also on account of dazzling lights of the on-coming vehicles, more particularly, considering the time of accident, which was in the wee hours of morning, prior to the sunrise.

In this case, if the driver of the truck had been little more careful and kept the parking lights 'ON' and complied with the rules of parking, then the accident, could have been averted. But unfortunately, it was not so. Considering the same, learned Tribunal has rightly held respondent No.1-Surinder Singh, driver of the truck, to be solely responsible for the accident in question and thus, correctly decided issues No.1 and 2, qua the manner of accident, in favour of the claimants. In the light of the same, plea of contributory negligence, as so asserted in the cross-objections, does not hold any ground and therefore, cross-objections, in both the appeals are dismissed.

In this backdrop, now coming to the claim of the appellants, to seek enhancement of the compensation, granted by learned Tribunal. Firstly, let us consider FAO-2865-2012, which relates to the death of Viney Sharma, who was driving the ill-fated car, at the relevant time.

It is specific claim of the claimants that deceased Viney Sharma was 28 years old and was following the avocation of driving and was also indulging in photography and earning Rs.6000-7000/- per month. Suman Rani, appellant No.1 had stepped into witness box as PW-5 and sworn her affidavit Ex.PW5/A, wherein, she had affirmed about the death of her husband Viney Sharma and also about the age and avocation, so followed by him. Rightly, on account of no evidence brought on record, learned Tribunal had discarded the avocation of photography, so alleged to have been followed by Viney Sharma. Anyhow, considering the material on record, Viney Sharma, has been rightly concluded to be working as Driver. Even, at the relevant time of accident, he was driving the car of Vinod Kumar. Moreover, Atam Parkash also stated about the car to be driven by driver Viney Sharma. Considering the said avocation, the earnings of deceased Viney Sharma had been taken to be Rs.5,000/- per month by learned Tribunal. However, in the fitness of the circumstances and considering the deceased to be skilled worker, working as Driver, in the modest estimate, his earnings are taken as Rs.6,000/- per month.

Even though, Viney Sharma is asserted to be 28 years old, at the time of accident, but no specific evidence, as such, regarding his age, has come on record. In the light of the same, learned Tribunal, while relying upon the recitals of post-mortem report Ex.P17, has appropriately considered the age of the deceased to be 32 years, as mentioned in the post-mortem report.

Now, with the settled proposition of law, in view of ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, considering the age of the deceased, addition of 40% ought to be made, on the count of 'future prospects'. By making this addition of 40%, the monthly earnings comes to be Rs.6000+2400(40%)=Rs.8,400/-. Keeping in view the number of dependents upon the deceased, who are three in number, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77,*** the deduction has be made to the extent of 1/3rd. Thus, making this deduction of 1/3rd, the loss of dependency comes to be Rs.8400-2800(1/3rd)=Rs.5,600/- and annual whereof, comes to be Rs.5600x12=**Rs.67,200/-**.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)*** the multiplier '16', applied by learned Tribunal is appropriate one. So applying the multiplier of '**16**', the loss of dependency comes to be **Rs.67200x16= Rs.10,75,200/-**.

Besides the aforesaid amounts, some compensation has to be paid on the count of 'loss of consortium'. 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 held 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***, and in ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***. As per ***Pranay Sethi's case (supra)***, it was Rs.40,000/- to be paid as 'loss of consortium', with enhancement of 10%, after every three years of passing of the judgment, which at present comes to be Rs.44,000/-. Thus, the claimants, who are three in number, are entitled to Rs.44,000/- each towards 'loss of consortium', and total thereof comes to be **Rs.1,32,000/-**.

Besides the aforesaid, in accord with ***Pranay Sethi's case (supra)***, another sum of Rs.16,500/- is paid towards 'funeral expenses' and similar amount of Rs.16,500/- is paid, towards 'loss of estate'.

Considering the same, the compensation payable to appellants-claimants in FAO-2865-2012, on account of death of Viney Sharma, is re-computated, as herein given:-

Loss of dependency	:	**Rs.10,75,200/-**
Loss of consortium	:	**Rs.1,32,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.12,40,200/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.12,40,200-6,55,000=Rs.5,85,200/-**. On the enhanced amount of the compensation i.e. **Rs.5,85,200/-**, 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.

Out of the enhanced compensation, as now awarded, appellant-claimant No.1-Suman Sharma is held entitled to Rs.2,85,200/- and appellants-claimants No.2 and 3 are held entitled to Rs.1,50,000/- each.

Now, let us consider the aspect of enhancement of the compensation, in FAO-6795-2011, relating to the death of Vinod Kumar.

On appraisal of the evidence, brought on record, learned Tribunal had granted compensation to the extent of Rs.36,47,344/-, on account of death of Vinod Kumar. It is specific claim of the appellants-claimants that deceased Vinod Kumar was indulging in the business and also following agricultural pursuit. To substantiate the extent of earnings and to prove the income tax returns, appellants-claimants had examined PW-1 Jawahar Lal, Senior Tax Assistant, Income Tax Office, Kaithal, who had prove the income tax returns for the assessment year 2010-2011 i.e. financial year from 01.04.2009 to 31.03.2010. This income tax return is Ex.P1, wherein, a sum of Rs.3 lakh is shown as agriculture income and a sum of Rs.2,45,000/- has been shown as income from business and other professional sources.

Next witness examined by the appellants-claimants is PW-2 Pardeep Kumar, Senior Tax Assistant, Income Tax Office, Yamuna Nagar, who had prove the income tax returns of the deceased for the year period 2008-2009 i.e. financial year from 01.04.2007 to 31.03.2008, which is Ex.P2 and for the year 2009-2010 i.e. financial year from 01.04.2008 to 31.03.2009, which is Ex.P3.

In Ex.P2, the income from the business has been shown as Rs.1,08,600/- and in Ex.P3, the income from the business is shown as Rs.1,45,200/- and agriculture income is shown as Rs.1,95,800/-. Moreover, widow of the deceased has also deposed about avocation followed by her husband Vinod Kumar, besides deposing about the factum of accident, which resulted into death of her husband.

Throughout, much emphasis has been laid upon the aforesaid income tax returns and it is submitted that the amount of compensation granted, is a meagre amount, which requires enhancement. In the light of the submissions, so made, it is pertinent to mention that learned Tribunal had rightly discarded Ex.P1,which is income tax returns for the assessment year

2010-2011. Suffice to mention that deceased was resident of Yamuna Nagar and the aforesaid income tax return had been filed at Kaithal. There is no reason, as such, assigned, as to why this return was filed at Kaithal. In the light of the same, it is also further pertinent to mention that in Ex.P1, the date of birth of deceased has been mentioned as 26.01.1978, whereas, in Ex.P2 and P3, it is 14.09.1977. It raises doubt about truthfulness of Ex.P1 and in the light of the same, learned Tribunal had correctly discarded Ex.P1 from consideration, to work upon the extent of earnings of deceased Vinod Kumar.

It is vehemently submitted by learned counsel for respondent No.3 that the avocation of the agriculturist, to be followed by deceased Vinod Kumar, does not stand established. It is submitted that the lease deeds Ex.P5 and Ex.P7, which have been tendered into evidence by the widow of the deceased, as such, cannot be taken into consideration, as the persons, who had executed the said lease deeds or any witness to the lease deeds, has not been examined and even, Khasra Girdawari, has not been placed on record. Moreover, it is submitted that J-forms etc., regarding sale of agricultural produce, have also not been brought on record.

However, the submission, so made by learned counsel for respondent No.3 is bereft of merits. It is always to be kept in mind that Motor Vehicle Act is a benevolent piece of legislation. It is summary proceedings and strict rules of evidence, as such, are not attracted, during the course of enquiry, under the said Act. Thus, documents Ex.P5 and Ex.P7, which are copies of the lease deeds, as such, can be taken into consideration as the same were executed prior to the death of Vinod Kumar and were also signed by him. There is nothing, as such, coming on record, about these documents to have been prepared as an afterthought, to extract compensation. Moreover, the income from the agricultural pursuit, has also been reflected in the income tax returns filed by the deceased, during his lifetime, which are Ex.P2 and Ex.P3. Thus, the recitals of the aforesaid returns, with regard to income from business and agriculture, as such, can be taken into consideration. Ex.P3 is the latest return for the assessment year 2009-2010 and it has been rightly considered by learned Tribunal. Perusal of the same reveals that the income accruing from the business, which was asserted to be that of 'Mithe Makhane' has been reflected to be Rs.1,45,000/- and besides the same, the income from the agriculture is Rs.1,95,800/-.

It is pertinent to mention that perusal of the lease deed reveals about some amount having been given as 'Chakota' to the lessors by the deceased, at the time of execution of the lease deeds. Beside the same, there is also input of expenditure, while cultivating the agricultural land. Considering this aspect, the modest deduction, ought to be made, on the basis of expenditure, from the income, so reflected, which has not been so asserted or shown by the appellants-claimants. Considering the same, the earnings from the agricultural pursuit is taken as Rs.1 lakh. So far as, income from the business is concerned i.e. to the extent of Rs.1,45,000/-, which never attracted imposition of tax, at the relevant time.

Thus, the earnings of the deceased are taken as Rs.1,45,200 from business and Rs.1 lakh from agricultural pursuit, the total whereof, comes to be Rs.2,45,200/- annually.

It is claim of the appellants-claimants that the deceased was 31 years old, at the time of death. In the post-mortem report, it is mentioned as 29 years, but however, in the income tax returns, so relied upon, which are Ex.P2 and P3, the date of birth has been mentioned as 14.09.1977. Considering the same, it becomes evident that the deceased was in the age group of 31-35 years.

Considering the age of the deceased, as per ***Pranay Sethi's case (supra)***, addition of 40% ought to be made, on the count of 'future prospects'. By making this addition of 40%, the annual earnings comes to be Rs.245200+98080(40%)=Rs.3,43,280/-. Keeping in view the number of dependents upon the deceased, who are four in number, as per ***Smt.Sarla Verma's case (supra),*** the deduction has to be made to the extent of 1/4th. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.3,43,280-85820(1/4th)=**Rs.2,57,460/-** annually.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)*** the multiplier '**16**', applied by learned Tribunal is appropriate one. So applying the multiplier of '**16**', the loss of dependency comes to be **Rs.257460x16= Rs.41,19,360/-**.

Besides the aforesaid amounts, as already observed, some compensation has to be paid on the count of 'loss of consortium', 'funeral expenses' and 'loss of estate'. In view of ***Magma' case (supra) and Pranay Sethi's case (supra)***, it was Rs.40,000/- to be paid as 'loss of consortium', with enhancement of 10%, after every three years of passing of the judgment, which at present comes to be Rs.44,000/-. Thus, the claimants, who are four in number, are entitled to Rs.44,000/- each towards 'loss of consortium' and total whereof comes to be **Rs.1,76,000/-**.

Besides the aforesaid, in accord with ***Pranay Sethi's case (supra)***, another sum of Rs.16,500/- is paid towards 'funeral expenses' and similar amount of Rs.16,500/- is paid, towards 'loss of estate'.

Considering the same, the compensation payable to appellants-claimants in FAO-6795-2011, on account of death of Vinod Kumar, is re-computated, as herein given:-

Loss of dependency	:	**Rs.41,19,360/-**
Loss of consortium	:	**Rs.1,76,000/-**
Loss of estate	:	**Rs.16,500/-**
Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.43,28,360/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.43,28,360-36,47,344=Rs.6,81,016/-**. On the enhanced amount of the compensation i.e. **Rs.6,81,016/-**, the appellants-claimants No.2 to 4 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.

Considering the dismissal of the appeal, vis-a-vis, Seema Rani-appellant No.1, out of the enhanced compensation, as now awarded, children of deceased Vinod Kumar i.e. appellant-claimant No.2 and 3, namely, Arushi and Ayush Bal are held entitled to Rs.3,00,000 each, whereas, the residue amount of Rs.81,016/- shall be apportioned equally amongst the parents of the deceased i.e. appellants-claimants No.4 and 5.

The impugned Award dated 08.09.2011 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, both the appeal stands allowed.

October 19, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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