2023:PHHC:066905

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2344-2013 (O&M)
Date of Decision: May 09, 2023

Prabhjeet Kaur and others
...Appellants

VERSUS

Pepsu Road Transport Corp. and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajbir Singh, Advocate
for the appellants.

Mr.Karan Singla, Advocate
for respondents No.1 to 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 Malwinder Singh, in a motor vehicular accident, which took place on 28.05.2008.

On appraisal of the evidence adduced, learned Tribunal, vide impugned Award dated 11.10.2010, had granted compensation to the extent of Rs.6,10,000/- to the appellants-claimants, who are widow, minor children and parents of the deceased.

So far as, the fact of accident and manner of taking place of the same, 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 Malwinder Singh, on account of agricultural pursuit, to be **Rs.2,000/-** per month and vis-a-vis indulgence of deceased in dairy farming, his earnings have wrongly been considered as **Rs.36,000/-** per annum. Thus, it is submitted that compensation, so worked upon, while taking aforesaid extent of earnings of the deceased, is on lower side and compensation, so granted, is very meagre. Furthermore, it has also been submitted that on account of personal expenses, learned Tribunal has erroneously deducted 1/3rd, whereas, considering the number of dependents of the deceased, the deduction, to be made, ought to be to the extent of 1/4th, instead of 1/3rd. Besides the same, also it is submitted that the compensation, so granted, under the conventional heads is also on lower side. Thus, learned counsel for the appellants has made a prayer for acceptance of the appeal and extensive enhancement of the compensation.

On the contrary, learned counsel for respondents No.1 to 3 has resisted the claim of the appellants. He submits that compensation, so granted, is just and reasonable, while considering the evidence, so brought on record. However, he has fairly conceded that the deduction, on account of personal expenses, ought to be 1/4th, instead of 1/3rd, as done by learned

Tribunal. Thus, he submits that apart from recalculation to be made qua personal expenses, the extent of earnings, so taken, does not require enhancement, as sought for.

It is the version of the appellants-claimants that deceased Malwinder Singh was 36 years of age and he was cultivating 12 acres of agricultural land of his father and he was running a dairy farm. They had asserted the monthly income from dairy farming to be **Rs.30,000/-** per month i.e. **Rs.3,60,000/-** per annum and from the agriculture source, earnings were asserted to be **Rs.4 lakh** per annum.

To so substantiate their claim, Prabhjeet Kaur, widow of Malwinder Singh had stepped into witness box as CW-1 and her affidavit is Ex.CW1/A. Therein, she had asserted that her husband Malwinder Singh was an agriculturist and was also indulging into dairy farming and he had kept buffaloes and 4 cows. He was earning **Rs.30,000/-** per month from the dairy farming and **Rs.4 lakh** per annum from the agricultural pursuit. So far as, indulgence of the deceased in dairy farming is concerned, suffice to consider Ex.C1, issued by Milk Cooperative Society, Badhesha, which reveals about the milk pooled by Malwinder Singh for the period from **01.04.2007 to 31.03.2008**, i.e. soon before accident and the income was to the extent of **Rs.1,46,733/-**. Besides the aforesaid, the jamabandies for the year 2006-2007 have been proved on record as Ex.C2 to C4. Even, the passbook issued by Sangrur Central Cooperative Bank has been proved as Ex.C5, which shows the deceased to be having balance as on 02.02.2009 to the extent of **Rs.1,19,080/-**.

In view of the aforesaid evidence, it is pertinent to mention that learned Tribunal had though considered the payment, on account of pooling of the milk as **Rs.1,46,733/-** but however, while considering that some amount must have been spent for bringing up the cattle and in these circumstances, 50% cut was made, vis-a-vis, bringing/rearing up the expenses of the cattle and thus, took the income of **Rs.72000-73000/-** per annum, from the dairy farming. Furthermore, while considering the fact that no evidence has come on record about cattle to have been sold by the appellants/claimants, further, it was observed that they must be earning from the dairy farming and thus, drawing this inference, another 50% of the actual income, i.e. instead of having the income of **Rs.72,000/-** per annum, it was taken as **Rs.36,000/-** per annum, which comes to **Rs.3,000/-** per month. However, the aforesaid manner of 'work upon', vis-a-vis, earnings of the deceased is palpably erroneous.

No doubt, as observed from the certificate issued by the Milk Cooperative Society, it is evident that soon before the death, deceased Malwinder Singh was paid an amount of **Rs.1,46,733/- (rounded off as Rs.1,46,700/-)**, for pooling of the milk for the period from 01.04.2007 to 31.03.2008. Even though, it has to be taken into consideration that some expenditure is incurred by the person, who indulges in dairy farming, on taking care of cows and buffaloes, but however, making deduction to the extent of 50% is definitely on higher side. At the maximum, approximately 1/3rd can be taken as expenses for the maintenance of cows and buffaloes and thus, working upon the same, the income comes to be **Rs.1,46,700-**

48,900(1/3rd)=Rs.97,800/-. Even if, considering the fact of cows and buffaloes, still available with the appellants-claimants, as observed by learned Tribunal, then also, the deduction further made to the extent of 50%, out of Rs.72,000-73,000/-, as worked upon by the Tribunal, is also on higher side. The fact remains that though the cattle may be with the appellants-claimants, but they must be earning now, on account of sale of milk, solely on the account of input, on behalf of the appellants-claimants. It is their labour in dairy farming now, which may be yielding any income, on account of availability of cows and buffaloes. As such, further 50% deduction is definitely on higher side. In modest estimate, the deduction, in any case, should not be more than 30%. Thus, working upon the same, the income of the deceased comes to be **Rs.97800-29340(30%)=Rs.68,460/-** per annum.

Besides the aforesaid, another source of earnings of the deceased is stated to be agricultural income. To so establish, the jamabandi for the year 2006-2007 have been proved as Ex.C2 to C4. Ex.C2 reveals about Malwinder Singh to be having 150/760 share in 38 Bigha land. Also, it is the claim of the appellants-claimants that Malwinder Singh was cultivating 12 acres of land of his father Gurmeet Singh, relating to which, Jamabandi Ex.C4 has been proved.

Besides the same, even J-forms of Gurmeet Singh, father of the deceased have been proved on record as Ex.C6 to C8. However, it is pertinent to mention that these J-forms relates to the period after the death of Malwinder Singh. In these circumstances, no inference of earnings, as such, can be solely drawn, on the basis of these J-forms. But definitely, suffice to make mention that from the revenue record, so proved, the indulgence of the deceased in cultivation of land, stands established.

However, as so pointed out by learned counsel for respondents No.1 to 3, the fact remains that the land owned by Malwinder Singh is still there, with the appellants and in these circumstances, only loss, on account of managerial assistance, qua the land owned by Malwinder Singh is to be calculated. Besides the same, it should also be noted that Gurmeet Singh, father of the deceased is also owner of the agricultural land. It is quite obvious that deceased, being young son, must be rendering some assistance to his father, in cultivation of the land. Thus, keeping in view the share of Malwinder Singh in the agricultural land as well as in the land owned by his father Gurmeet Singh, as depicted in the Jamabandies, which have been proved on record and also considering the input in cultivation of the land, the earnings of the deceased, in the form of rendering services in agricultural output, as owner-cum-manager, should not be, in any case, less than Rs.4,000/- per month.

Considering the same, the extent of earnings, so worked upon by learned Tribunal, on account of agricultural pursuit, is on lower side, which requires re-appraisal.

In the light of the observations aforesaid, in total, considering the earnings, on the count of dairy farming to be **Rs.68,460/-** per annum and also considering the earnings, on the count of agricultural pursuit, to be to the extent of **Rs.4000/-** per month, i.e. **Rs.48,000/-** per annum, the total earnings comes to be **Rs.68460+48000=Rs.1,16,460/-** per annum.

Considering the same, the deduction, on account of personal expenses, to the extent of 1/3rd, as done by learned Tribunal, is on higher side. Considering the number of dependents of the deceased, to be falling in the bracket of 4-6, as per ***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. Making it to be so, the annual dependency is worked upon as **Rs.1,16,460-29115(1/4th)=Rs.87,345/-**.

Keeping in view the age of the deceased to be 36 years, 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, **40%** addition has to be made as future prospects and thus, the annual dependency comes to be **Rs.87345+34938(40%)=Rs.1,22,283/-**. The suitable multiplier, as per guidelines laid down in ***Sarla Verma's case (supra)***, is '**15**'. Thus, after applying the multiplier of '**15**', the loss of dependency comes to be **Rs.1,22,283x15= Rs.18,34,245/-**.

As per the decision of the Hon'ble Supreme Court rendered in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and ***Pranay Sethi's case (supra)***, all the appellants-claimants, who are widow, minor children and parents of the deceased, are entitled to compensation for '**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.18,34,245/-**, 'loss of consortium' comes to be **Rs.2,20,000/-**, **Rs.16,500/-** as 'loss of estate' and **Rs.16,500/-**, as 'funeral expenses'. Therefore, the total comes to be **Rs.20,87,245**/-.

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.20,87,245-6,10,000 =Rs.14,77,245/-**.

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.6,77,245/-** shall be paid to appellant-claimant No.1-Smt.Prabhjeet Kaur, a sum of **Rs.3 lakh each**, shall be paid to appellants-claimants No.2 and 3, namely Saranpreet Kaur and Harpreet Singh and a sum of **Rs.1 lakh each**, shall be paid to appellants-claimants No.4 and 5, namely Smt.Surinder Kaur and Gurmeet Singh.

Accordingly, the impugned Award dated 11.10.2010 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award and the interest component, shall remain the same.

With the above observations, the present appeal stands allowed.

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

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