2023:PHHC:145273

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1813-2014 (O&M)
Date of Decision: November 15, 2023

Naresh Kumari and others

...Appellants

VERSUS

Gurcharan Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.J.S.Cooner, Advocate
for the appellants.

Mr.B.S.Taunque, Advocate
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 by learned Motor Accident Claims Tribunal, on account of death of Jai Pal, in a motor vehicular accident, which took place on 01.08.2011.

Initially, three claim petitions; one filed by Karamjit Kaur, for having sustained injuries; other filed by present appellants-claimants, qua death of Jai Pal and; third filed wife and children of deceased Binder Singh @ Vinder, in the same accident, were consolidated and disposed of vide impugned Award.

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

That, on 01.08.2011, at about 11.00 a.m., Karamjit Kaur was going to her house, situated in village Gorakhnath from Pinjore, in a bus bearing registration No.HR-68-4367, being driven by driver Jai Pal. When the bus reached in front of village Kona, within the territorial jurisdiction of Pinjore, a truck bearing registration No.HYE-0411, came from opposite side, being driven by respondent No.1-Gurcharan Singh. In the claim petition, there was imputed rashness and negligence upon both the drivers of bus as well as the truck in question. Binder Singh @ Vinder was travelling in the truck, with the owner of the goods, whereas, Jai Pal was driver of the aforesaid bus. Even, Jai Pal had died in the accident in question.

On appraisal of the evidence, brought on record, learned Tribunal, had concluded about the accident to have taken place, on account of rash and negligent driving of respondent No.1-Gurcharan Singh, being driver of the offending truck, which led to the injuries, on the person of one Karamjit Kaur, as well as death of Jai Pal, driver of the bus and also death of Binder Singh @ Vinder, who was travelling in the offending truck.

It is pertinent to mention that so far as the fact of accident and manner of its taking place of the same, as concluded by learned Tribunal and also the liability, so fastened upon the respondents, is concerned, no appeal has been filed by any of the persons, who have been made so liable. Hence, this aspect does not warrant any further scrutiny.

The appeal, in hand, has been filed by the appellants-claimants for seeking enhancement of the compensation, qua death of Jai Pal.

On appraisal of the evidence, brought on record, it was concluded by learned Tribunal that deceased Jai Pal was working as Driver in Haryana Roadways, Chandigarh and was getting about salary of Rs.28,056/- per month and he was more than 50 years old, at the time of accident. Thus, while treating the earnings of the deceased as Rs.28,000/- per month and also concluding about, no addition to be made, on the count of 'future prospects', the further compensation was worked upon. 1/4th of the income of the deceased was deducted and residue was worked upon as Rs.21,000/-, the annual whereof was Rs.2,52,000/-. Considering the age of the deceased, the multiplier applied as '11' and the compensation was worked upon as Rs.27,72,000/-. Besides the same, another sum of Rs.1 lakh was granted, on the count of 'loss of consortium' and Rs.25,000/- was granted for 'funeral expenses'. In total, the compensation awarded was Rs.28,97,000/-.

However, the compensation, as detailed aforesaid, as per prevalent settled law, calls for re-computation.

To substantiate the version as put forth in the claim petition, appellant-claimant Naresh Kumari herself stepped into witness box as PW-7 and her affidavit is Ex.PW1/A. She has deposed in consonance with the pleaded case. Moreover, PW-8 Rajesh Kumar, Salary Clerk, from the office of General Manager, Haryana Roadways, Chandigarh, has proved the salary certificate of deceased, which is Ex.P1. PW-10 Ramphal has deposed about accompanying deceased Jai Pal in the bus in question, at the relevant time, in the capacity of being conductor. Besides the same, various documents, with regard to the post-mortem report, death certificate etc. have been proved on record.

From the evidence adduced, it stands established that Jai Pal was driving the bus in question, at the relevant time and he had sustained injuries, in the accident in question, as a result whereof, he had died. Also, it stands established that deceased was falling in the age group of 52-53 years and was following the avocation of Driver in the Haryana Roadways Department. Also, from the salary certificate Ex.P1, which is salary slip of the deceased, for the month of July 2011, it is evident that the total earnings of the deceased was Rs.28,056/-. As per ***Sarla Verma's case***, the salary means, minus income tax. From Ex.P1, it is evident that income tax deducted was to the extent of Rs.1,500/-. Thus, after making this deduction, the monthly earnings, comes to be Rs.26,500/-.

However, learned Tribunal had erroneously denied addition on the count of 'future prospects'. As per principles settled in ***Pranay Sethi's case***, keeping in view the age of the deceased, addition of 15% ought to be made, on the count of 'future prospects'. Taking it to be so, the earnings comes to be Rs.26,500+3975(15%)=Rs.30,475/-. Considering the total number of dependents upon the deceased i.e. four in number, as per ***Sarla Verma's case,*** 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.30475-7618(1/4th)=Rs.22,857/- and annual loss of dependency comes to be Rs.22857x12=Rs.2,74,284/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** the multiplier '11', applied by learned Tribunal is appropriate one. So applying the multiplier of '**11**', the loss of dependency comes to be **Rs.274284x11= Rs.30,17,124/-**.

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Besides the same, the amounts are to be paid under the conventional heads, such like, 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 held 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 Jai Pal, is re-computated, as herein given:-

Loss of dependency	:	**Rs.30,17,124/-**
Loss of consortium	:	**Rs.1,93,600/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.32,47,024/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.32,47,024-28,97,000=Rs.3,50,024/-**. On the enhanced amount of the compensation i.e. **Rs.3,50,024/-**, 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-Naresh Kumari, is held entitled to Rs.1,50,024/- and appellants-claimants No.2 to 4 are held entitled to Rs.50,000/- each.

The impugned Award dated 15.11.2013 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

In the light of the aforesaid observations, now the question arises, about deduction to be made, vis-a-vis, amount received by the widow under the Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006. In this regard, suffice to make reference to the cross-examination of PW-8 Rajesh Kumar, who had brought the salary record and has deposed about wife of deceased Jai Pal, to be getting basic pay, DA, Medical-total salary of Rs.28,484/- per month. However, there is no material, as such, coming on record, to establish the exact detail of the amounts, received by the widow, under the said Rules. Anyway, with regard to the amounts, coming in the hands of widow, under the said Rules, reference, as such, is made to the decision rendered in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others, 2016(4) RCR (Civil) 569***, wherein, the Hon'ble Supreme Court had observed, as herein given:-

> *"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of*

> *compensation which appears to it to be just. The amount receivable by the dependents/claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello's case, 1999 ACJ 10 (SC) and Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC).*

Furthermore, in ***National Insurance Company Limited vs. Birender and others, 2020(1) RCR (Civil) 694***, it was held by the Hon'ble Supreme Court that amount received under the Financial Assistance Rules 2006, ought to be deducted.

Thus, it is concluded that this amount, as such, has to be deducted, but however, there is no clear and categoric evidence, coming on record, about the amounts, received by the widow, under the Financial Assistance Rules.

In the light of the same, while concluding that amount, so received by widow or any other legal heir of the deceased, ought to be deducted, it is also directed herein that the enhanced amount be allowed to be withdrawn by the appellants-claimants, at the relevant time, upon filing of an affidavit-cum-declaration, before the Executing Court, thereby, giving the detail of the amounts received towards financial assistance under the Rules 2006. Thereafter, learned Executing Court shall be also at liberty to verify about the payments made to widow-Naresh Kumari or to any other appellant-claimant and further, release the residue enhanced amount, after making requisite deductions, from the amounts, so received under the aforesaid Rules. In any case, if more amount, as such, had been released, the Executing Court, shall be also at liberty to proceed further, to make the exact calculation and call for recovery of the excess amount (if any) received under the aforesaid Financial Assistance Rules.

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

November 15, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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