IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3949-2013 (O&M)
Date of Decision: July 05, 2023

Usha Devi and others

...Appellants

VERSUS

Balbir Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Arun Yadav, Advocate
for the appellants.

Mr.Punit 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 Naresh, in a motor vehicular accident, which took place on 13.05.2011.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 18.12.2012, had granted compensation to the extent of Rs.11,62,500/-to the appellants-claimants, who are widow, minor children 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 indulging in truck driving and earning Rs.9000/- per month. The Tribunal has erroneously considered the earnings of the deceased to be Rs.7,500/- per month and therefore, the assessment of the earnings is on lower side, as a result thereof, the compensation, so worked upon, is quite meagre. Besides the same, it is also submitted that considering the age of the deceased to be 25 years, addition of 40% in the earnings, on the count of '**future prospects**' is required to be made. Even, the compensation granted on the count of '**loss of consortium**' is liable to be enhanced. Even, it is submitted by learned counsel for the appellants that suitable multiplier, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, considering the age of the deceased, was required to be '**18**', instead of '**17**', as applied by learned Tribunal.

Thus, learned counsel for the appellants submitted that the compensation, so worked upon, requires extensive enhancement and therefore, call for re-appraisal.

On the other hand, learned counsel for the Insurance Company has resisted the claim of the appellants. He submits that the compensation, so worked upon, on account of scanty evidence, coming on record, 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.

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 in the age group of 25-27 years and was working as a Driver. It is their claim that he was employed with one Pardeep Kumar s/o Pehlad Singh, r/o village Behrampur-Bharanghi, Tehsil Bawal, District Rewari and was earning Rs.7,500/- per month plus Rs.50/- daily allowance.

Usha Devi, widow of the deceased, in her affidavit Ex.PW1/A has stated as per the pleaded case, on the count of age of the deceased as well as avocation followed by him and his monthly earnings. Besides the same, PW-4 Pardeep Kumar, who is the employer of the deceased and who is registered owner of truck bearing registration No.HR-47A-4680, has deposed about employment of Naresh with him as Driver and has further deposed about his salary to be Rs.7500/- per month plus Rs.50/- daily *bhatta* and stated his earnings to be Rs.9,000/- per month.

However, very true, as now pointed by learned counsel for the Insurance Company that there is no documentary evidence, coming on record, about the indulgence of the deceased in truck driving and his extent of earnings to be Rs.9000/- per month. May it be so, then also, it is pertinent to mention that in such kind of employments as driver on the vehicle, labourers etc., by and large, there is no documentary evidence available. However, at the same time, it is pertinent to make reference to the cross-examination of PW-4 Pardeep Kumar, who while facing cross-examination has categorically deposed that he used to keep the record of salary given to the drivers but at the same time, he has also stated that he has not brought the same. Since, the said employer was stating that he maintains the record of the salary but he has not produced the same, therefore, the assertion about earnings to be Rs.9,000/- per month, does not stand amply established. In the given circumstances, by making some guess work, on account of the deceased being driver and that too on a truck, the monthly earnings have been appropriately taken to be Rs.7,500/-.

Considering the widow, two minor children and mother to be dependent upon the deceased, the deduction has to be made, on account of personal expenses. Keeping in view the number of dependents to be four in number, the deduction ought to be to the extent of 1/4th. Making it to be so, the monthly dependency is worked upon as **Rs.7500-1875(1/4th)=Rs.5.625/-**.

Though, it is submitted by learned counsel for the appellants-claimants that suitable multiplier to applied, as per ***Sarla Verma's case (supra)***, is '**18**' and learned Tribunal had erroneously applied the multiplier of '**17**', while computing the compensation, but however, the aforesaid submission is not tenable. Even though, in the claim petition, it has been asserted that deceased was in the age group of 25-27 years, at the time of his death, but however, during the course of arguments, it is submitted that deceased was 25 years old at the time of his death. However, the driving licence of the deceased has been proved as Ex.P1 and therein, his date of birth is mentioned as 22.02.1985. Considering this recital of date of birth, at the relevant time of accident, the age of the deceased is assessed as 26 years and 3 months. Considering the same, the multiplier, as per ***Sarla Verma's case (supra)***, is '**17**', which has been correctly applied by learned Tribunal, while computing the compensation.

However, 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 to 26 years, addition of **40%** has to be made as '**future prospects**' and thus, the amount comes to be **Rs.5625+2250(40%) =Rs.7,875/-** per month. Therefore, annual dependency comes to be **Rs.7875x12=Rs.94,500/-**. The suitable multiplier, as per ***Sarla Verma's case (supra)***, is '**17**'. Thus, after applying the multiplier of '**17**', the loss of dependency comes to be **Rs.94,500x17= Rs.16,06,500/-**.

It is pertinent to mention that learned Tribunal had granted Rs.5,000/- each, on the count of '**loss of estate**', '**funeral expenses**' and '**loss of consortium**', which needs enhancement, as per latest settled law.

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.16,06,500/-**, '**loss of consortium**' comes to be **Rs.1,76,000/-**, **Rs.16,500/-** as '**loss of estate**' and **Rs.16,500/-** as '**funeral expenses**'. Therefore, the total comes to be **Rs.18,15,500**/-. As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.18,15,500-11,62,500 =Rs.6,53,000/-**.

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.2,53,000/-** shall be paid to appellant-claimant No.1-Usha Devi, a sum of **Rs.1.5 lakh** each, shall be paid to appellants-claimants No.2 and 3, namely Arti and Himanshu and **Rs.1 lakh** shall be paid to appellant-claimant No.4 Parbhati Devi. Keeping in view the interest rates, having reduced drastically, on the enhanced amount of the compensation i.e. **Rs.6,53,000/-**, 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.

Respondent No.3-Insurance Company is directed to pay the enhanced compensation, as now awarded, to the appellants-claimants within a period of two months from today onwards.

Accordingly, the impugned Award dated 18.12.2012 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, as regards recovery rights, shall remain the same.

With the above observations, the present appeal stands allowed.

July 05, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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