

2023:PHHC:160071

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-4600-2014 (O&M) and  
XOBJC-231-CII-2016  
Date of Decision: December 13, 2023

Phooli Devi and others

...Appellants

VERSUS

Rajbir Singh and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Jagjit Singh Gill and Mr.Amritpal Singh, Advocates  
for the appellants.

Mr.B.S.Bairagi, Advocate  
for respondents No.1 and 2/cross-objectors

Mr.Om Pal Sharma, 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 Om Parkash, in a motor vehicular accident, which took place on 15.10.2011.

On appraisal of the evidence, brought on record, learned Tribunal, vide impugned Award dated 06.05.2013, had granted compensation to appellant No.1 only, to the extent of Rs.5,37,000/-. Besides the same, a sum of Rs.10,000/- each was granted to appellants No.2 and 3,

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who are the sons of the deceased, towards 'love and affection'. However, keeping in view the circumstances of the case, respondent No.3-insurance company was given liberty to recover the amount of compensation from respondents No.1 and 2-owner and driver of the offending truck bearing registration No.HR-61A-1598.

So far as the fact of accident and manner of its taking place, as well as the liability, so fastened upon the driver, owner and also the insurer of the offending vehicle, to whom recovery rights have been given, it is pertinent to mention that no appeal has been filed by the respondents to challenge the aforesaid findings.

During the pendency of the appeal in hand, to challenge the recovery rights, as such, having been granted to the insurance company, the cross-objections i.e. XOBJC-231-CII-2016 were filed by respondents No.1 and 2-owner and driver of the offending vehicle.

At the very outset, it has been submitted by learned counsel for the appellants that compensation has been wrongly denied to the sons of the deceased and erroneously, learned Tribunal had granted only a sum of Rs.10,000/- each, to appellants No.2 and 3, towards 'love and affection'. Even, compensation, so worked upon qua appellant No.1 is quite meagre. It is submitted by learned counsel for the appellants that earnings of the deceased has been taken on lower side. Besides the same, it is submitted that addition on the count of 'future prospects' and 'loss of consortium' ought to be made. Even, the amounts granted towards 'funeral expenses' and 'loss of estate', are on lower side and consequently, the compensation, so worked upon, calls for extensive enhancement.

On the other hand, learned counsel for the insurance company has submitted that the compensation already worked upon is 'just and reasonable'. As such, a prayer was made for dismissal of the appeal.

At the very outset, it is pertinent to reiterate the concept of 'just' compensation under Section 168 of the *ibid* Act. It is settled proposition of law, now through catena of decisions, including the one, rendered by the Constitution Bench in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact dependent exercise, which must be liberal and not parsimonious. It must be emphasized that the compensation is more comprehensive form of pecuniary relief, which involves broad-based approach. The Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation, as per the contemporaneous position of an individual which is essentially forward-looking.

In *Kirti and another vs. Oriental Insurance Company Limited, 2021 (2) SCC 166*, the Hon'ble Apex Court held that "any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity and good conscience.

In this backdrop, as per settled prevalent law, the compensation, so worked upon by learned Tribunal, as observed aforesaid, definitely calls for re-computation.

Before proceeding further, it is pertinent to mention that learned Tribunal had granted compensation, only to appellant No.1, who is wife of

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the deceased. However, a sum of Rs.10,000/- each was granted to appellants No.2 and 3, on the count of 'love and affection', while considering them to be major sons and working as Masons. However, the observations, so made by learned Tribunal are erroneous. In this regard, reference is made to decision rendered in *National Insurance Company Limited v. Birender (2020) 11 SCC 356*, wherein, in a claim petition filed by major married and earning sons of the deceased mother, the Court granted the compensation.

Though, the sons are major and working as Mason, but however, fact remains that the children, though are grown up and may be settled in their own lives, but it cannot be said that they were not dependent upon their father. It is pertinent to mention that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service. Thus, dependency is a relevant criteria to claim compensation for loss of dependency. It does not mean financial dependency only. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Thus, considering the same, children of deceased, ought not to be deprived of the compensation, to be so worked upon.

It is the categoric assertion of the appellants-claimants that the deceased Om Parkash was working as a Mason and his earnings are stated to be Rs.15,000/- per month. However, while discarding the evidence of the appellants-claimants, learned Tribunal had held the deceased to be a labourer on daily wages and considering him to be so, his monthly income was

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assessed as Rs.5,000/- per month. However, there is no reason to discard the testimony of son of the deceased about the avocation followed by his father. In the given circumstances, when there is categoric version, coming forth, about the deceased to be working as Mason, even, in the absence of documentary evidence, which generally is not available in such cases and also considering the testimony of PW-3 Ujjagar Singh, the avocation followed by the deceased as Mason, as such, is to be taken into consideration. Though, the earnings are stated to be Rs.15,000/- per month, but however, by applying some moderation, keeping in view the eventuality of, not working on all the days of the month, in modest estimate, the earnings of the deceased, can conveniently be taken to be Rs.6,000/- per month.

It is the claim of the appellants that the deceased was 45 years old. In the post-mortem report, deceased is stated to be approximately 50 years old. In the absence of any material, vis-a-vis, date of birth to the Om Parkash, as such, he is taken to be falling in the age group of '45-50' years and that being so, as per *Pranay Sethi's case (supra)*, the addition of 25%, on the count of future prospects has to be made. Taking it to be so, the earnings are worked upon as  $\text{Rs.6000} + 1500(25\%) = \text{Rs.7,500/-}$  per month.

Considering the total number of dependents upon the deceased to be 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  $\text{Rs.7500} - 2500(1/3\text{rd}) = \text{Rs.5,000/-}$  and annual thereof, comes to be **Rs.60,000/-**.

Considering the age of the deceased, as per *Sarla Verma's case (supra)* the multiplier '13', applied by learned Tribunal is appropriate one. So applying the multiplier of '13', the loss of dependency comes to be **Rs.60000x13= Rs.7,80,000/-**.

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)*. It is pertinent to mention that learned Tribunal had granted Rs.10,000/- each to appellants No.2 and 3, towards love and affection. However, 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. It was further held that **'loss of love and affection is comprehended in loss of consortium'**. Hence, there is no justification to award compensation towards loss of love and affection, as a separate head.

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 Om Parkash, is re-computed, as herein given:-

|                    |   |               |
|--------------------|---|---------------|
| Loss of dependency | : | Rs.7,80,000/- |
| Loss of consortium | : | Rs.1,45,200/- |
| Loss of estate     | : | Rs.18,150/-   |
| Funeral expenses   | : | Rs.18,150/-   |
| Total              | : | Rs.9,61,500/- |

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.9,61,500-5,57,000(Rs.5,37,000+Rs.20,000)=Rs.4,04,500/-**. On the enhanced amount of the compensation i.e. **Rs.4,04,500/-**, 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-Phooli Devi is held entitled to **Rs.2,04,500/-** and appellants-claimants No.2 and 3 are held entitled to **Rs.1,00,000/-** each.

Proceeding further, now the question of liability to pay the aforesaid compensation calls for consideration.

The cross-objections have been filed by respondents No.1 and 2 i.e. owner and driver of the offending truck bearing registration No.HR-61A-1598, wherein, they have challenged the recovery rights granted to respondents No.3-insurance company. However, learned counsel for respondent No.3-insurance company has assiduously submitted that cross-objectors are seeking relief against co-respondent and therefore, the cross-objections are not maintainable.

In view of the submissions, so made, it is appropriate to make reference to the decision rendered by the Hon'ble Supreme Court in

***Sharanamma v. North East Karnataka RTC, 2013 (11) SCC 517***, wherein, it

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was held that when an appeal is filed under Section 173 of the Motor Vehicles Act, before the High Court, the normal rules, which apply to appeals before the High Court, are applicable to such an appeal also.

Paragraph No.10 of *Sharanamma's case (supra)* is reproduced as herein given:-

*"10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as "the Act"), before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also. Even otherwise, it is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law."*

In view of the aforesaid, appeal under Section 173 of the Motor Vehicles Act and the applicability of Order 41 CPC, also not having been excluded, the normal rules which apply to appeals before High Court, are applicable.

Order 41 CPC is the normal rule, which applies to appeals before the High Court.

Order 41 Rule 33 of C.P.C reads as under:-

***"33. Power of Court of Appeal :-***

*The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees,*

*although an appeal may not have been filed against such decrees:*

*Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”*

***“Illustration:-***

*A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.”*

**In *Pannalal vs State of Bombay and others*, AIR 1963 SC 1516,**

with respect to Order 41, Rule 33, the Hon'ble Apex Court held that wide wording of Order 41, Rule 33 CPC, was intended to empower the appellate court, to make whatever order it thinks fit, not only as between the appellant and the respondent, but also as between respondent and a respondent. It empowers the appellate court, not only to give or refuse relief to the appellant, by allowing or dismissing the appeal, but also to give such other relief to any of the respondent as “the case may require”. It was further held that if there was no impediment in law, the High Court in appellate court, therefore, though, allowing the appeal of the defendant by dismissing the plaintiff's suit against it, but the plaintiff/respondents decree against any or all the other defendants, who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear, the illustration aforesaid puts the position beyond argument.

Furthermore, the Hon'ble Apex Court in ***Chaya vs. Bapusaheb*, 1994(2) SCC 41**, held that this provision i.e. Order 41 Rule 33 C.P.C, is based on a salutary principle that the appellate court should have the power

to do complete justice between the parties. The rule confers a wide discretionary power on the appellate court to pass such decree or order as ought to have been passed or as the case may require, notwithstanding the fact that the appeal is only with regard to a part of the decree or that the party in whose favour the power is proposed to be exercised, has not filed any appeal or cross-objection.

Furthermore, in *Pralhad and others vs. State of Maharashtra and another. 2010(10) SCC 458*, the Hon'ble Apex Court held that the provision of Order 41 Rule 33 CPC, is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order, as the case may require.

It is apt to refer Paragraph No.18 of the aforesaid judgment, which is reproduced, as herein given:-

*“18. The provision of Order 41 Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which ought to have been made as the case may require. The expression “order ought to have been made” would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying “the court may pass such further or other order as the case may require”. This expression “case” would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.*

In this backdrop, for doing justice and to award just compensation, provisions of Order 41 Rule 33 are to be invoked. In the

given circumstances, the plea so raised in the cross-objections, as such, can be considered while adjudicating upon the appeal, for seeking enhancement.

Though, no appeal, as such, has been filed by the appellants-claimants to challenge the liability and the recovery rights, having so given to the insurance company, but however, the case, as such, re-opens and therefore, this Court, while exercising powers under Order 41 Rule 33 CPC, can definitely consider the manner of appraisal made by learned Tribunal, vis-a-vis, recovery rights, having granted to the insurance company.

In view of the same, now reverting to the case in hand. It should be noted that owner and driver of the offending truck bearing registration No.HR-61A-1598, had initially made appearance before learned Tribunal, but however, they were proceeded against ex-parte vide order dated 25.04.2012. In the light of the same, no evidence, as such, was led at their behest. However, the insurance company, who was respondent No.3, tendered into evidence the copy of the insurance policy Ex.R1 and thereafter, their evidence was closed.

Specific issue No.4 has been framed, in view of the contents of the written statement, which reads as herein given:-

*“4. Whether the insurer is liable to be exonerated on the ground taken in the written statement? OPR.”*

In the light of the same, it is pertinent to mention that no evidence, at all has been led by the insurance company, thereby, seeking its exoneration. Precisely, on this account, now reverting to the observations made by learned Tribunal in paragraph No.20 of the impugned Award. It is pertinent to mention that at one stage, learned Tribunal had made an

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observation that though respondents No.1 and 2, along with their written statement, have attached the copy of driving licence of respondent No.2, but however, they have been proceeded ex-parte and thereafter, no document, as such, has been proved on record and the same cannot be read in favour of either party. Proceeding further, it has also been observed by learned Tribunal that respondent No.3 i.e. the insurance company, has also not led any evidence on record to show that respondent No.2 was not possessing a valid driving licence, on the date of accident or how the insured has violated the terms and conditions of the insurance policy, on account of which the insurance company may be exonerated for making the payment to the claimants.

Furthermore, in the succeeding paragraph No.21, it has been observed about respondents No.1, 2 and 3 to be jointly and severally liable to pay the compensation awarded to the claimants, but however, keeping in view the peculiar circumstances of the case, respondent No.3 is at liberty to recover the aforesaid amount of compensation from respondents No.1 and 2, in due course of law, by filing separate proceedings before competent Court of law. Such observations are in itself contrary to the observations made in preceding paragraph. Undisputedly, the position is evident from the record that onus to prove issue No.4, as reproduced aforesaid, was upon the insurance company. However, no evidence, as such, has come on record. No doubt, the photocopy of the driving licence of respondent No.1 was stated to have been filed by respondents No.1 and 2, but the same was not proved in due course. Even, the insurance company has not bothered to make an attempt to verify about this driving licence and its recitals from the

concerned authority and to tender into evidence said driving licence.

In the given circumstances, there was no evidence led by the insurance company to seek exoneration from the liability to pay the compensation amount to the appellants-claimants. Therefore, learned Tribunal has erroneously granted recovery rights to respondent No.3-insurance company. Thus, on this count, the findings, so recorded is hereby set aside and the liability is fastened upon respondent No.3-insurance company, together with respondents No.1 and 3 and the same shall be joint and several.

In view of the aforesaid discussion, the appeal i.e. **FAO-4600-2014** stands allowed, whereas, **XOBJC-231-CII-2016** stand disposed of.

December 13, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | Yes |