IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2221-2016 (O&M)
Date of Decision: December 05, 2023

Sarabjit Singh

...Appellant

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sushil Saini, Advocate
for the appellant.

Mr.Jasleen Kaur Sidhu, DAG, Punjab.

****

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation, awarded by learned Motor Accident Claims Tribunal, on account of death of his son Abhijot Singh, aged 3 years, in a motor vehicular accident, which took place on 16.11.2012.

On appraisal of the evidence brought on record, learned Tribunal had granted compensation, to the extent of Rs.1,60,000/- along with interest @ 6% per annum.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the respondents, are concerned, it is pertinent to mention that no appeal, as such, has been filed by the persons, so made liable to challenge the Award and thus, findings so recorded on this count, does not warrant any further scrutiny.

In this backdrop, learned counsel for the appellant-claimant has submitted that compensation granted to the appellant, on account of death of son Abhijot Singh, in the accident, is meagre, which calls for extensive enhancement.

On the other hand, learned counsel for the Insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon and thus, he submits that the appeal sans merit and deserves to be dismissed.

Suffice to consider, for the disposal of the present appeal that the deceased Abhijot Singh was asserted to be 3 years, at the time of accident. While holding the deceased to be non-earning person, being child and having died at the age of three years, though, the earnings have been taken as Rs.15,000/- per annum, but 1/3rd was deducted on the count of personal expenses and his total income was taken as Rs.10,000/- per annum. By applying the multiplier of '15', the amount of compensation has been worked upon as Rs.1,50,000/-. In addition thereto, another amount of Rs.2,500/- was granted on account of funeral expenses, Rs.5,000/- was granted, towards loss of consortium and another Rs.2,500/- was granted, towards loss of estate. But anyhow, as per settled prevalent scenario, the compensation, so worked upon by learned Tribunal calls for enhancement.

In this regard, at the very outset, it is pertinent to mention that

Hon'ble Supreme Court in case titled as *'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'*, while considering the death of a child, aged 10 years took the notional income of the deceased as Rs.30,000/- and applied multiplier of '15' and compensation came to be Rs.4.5 lakh. Another Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in that case, related to the year 1992.

Even, Hon'ble Supreme Court in case titled as *"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021"* considered the case of death of 7 years old child, in a motor vehicular accident, which took place in the year 2004 and made certain observations, which are as under:-

> *"11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC 256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.*
>
> *12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central*

Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company."

In view of the aforesaid observations, the Court took the notional income of the deceased child as Rs.25,000/- per annum and applied multiplier of '15' as prescribed in Schedule-II, for the claims under Section 163A of the Motor Vehicles Act, 1988 and worked upon the amount as Rs.3.75 lakh, towards the loss of dependency. Besides the same, Rs.40,000/- each was given to the claimants, who were two in number, towards filial consortium and Rs.15,000/- was given towards funeral expenses. The total compensation was worked upon as Rs.4,70,000/-.

On the subject, in case titled *'Meena Devi v/s Nunu Chand*

Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553' the Hon'ble Supreme Court had considered the case of death of 12 years old child, in a motor vehicular accident and while granting compensation had observed that the principle laid down in case of *Kishan Gopal's case (supra)*, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/- including future prospects and applying the multiplier of '15', in view of the decision of the Court passed in *''Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77'*, the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made under conventional heads and thus, the total compensation was worked upon as Rs.5,00,000/-

Considering the aforesaid, now reverting to the case in hand. Be it noted that the Insurance Company had not challenged the Award. The accident in the case, in hand, had taken place on 16.11.2012 and also considering the date of death in *Kishan Gopal's case (supra)*, the value of rupee has come down drastically.

Taking into consideration, all the aforesaid factors, in modest estimate, the notional earnings of the deceased, in the case in hand, can safely be taken to be Rs.30,000/- per annum. Thus, considering the age of the deceased, the multiplier to be applied in the case, in hand, is '15' and so calculating, the loss of dependency comes to be Rs.4,50,000/-.

Besides the aforesaid, amounts are to be paid on conventional heads, such like, loss of estate, loss of consortium 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, wherein, it has been held that filial consortium is the right of the parents to compensation, in case of accidental death of a child.

In consonance with the observations made in *Pranay Sethi's case (supra)*, after making addition of 10%, after three years from the date of passing of the judgment, the amount payable, at present, on the count of '**loss of consortium**' is to extent of **Rs.48,400/-** to each of the 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 appellant-claimant, on account of death of Abhijot Singh, is re-appraised, as herein given:-

Loss of dependency	:	Rs.4,50,000/-
Loss of consortium	:	Rs.48,400/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.5,34,700/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,34,700-1,60,000=Rs.3,74,700/-**. On the enhanced amount of the compensation i.e. **Rs.3,74,700/-**, the appellant-claimant 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.

The impugned Award dated 17.04.2014 stands modified, to the extent, as indicated aforesaid and the remaining terms of Award shall remain the same.

With the above observations, the present appeal stands allowed.

December 05, 2023 (ARCHANA PURI)
Vgulati JUDGE

Whether speaking/reasoned Yes
Whether reportable Yes