

2023:PHHC:146657

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5101-2014 (O&M)
Date of Decision: November 17, 2023

Bhoop Singh and another

...Appellants

VERSUS

Hari Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Raman Chawla, Advocate
for the appellants.

Mr.Sanjeev Kodan, Advocate
for respondent No.3.

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 Vijay Pal, in a motor vehicular accident, which took place on 05.07.2014.

On appraisal of the evidence, brought on record, learned Tribunal, assessed the loss of dependency of the claimants, who are the parents of the deceased as Rs.2,64,000/- and further, Rs.20,000/- granted on account of 'funeral expenses'. Learned Tribunal simultaneously held that deceased Vijay Pal was equally negligent in causing the accident and as a result thereof, the claimants were held entitled to recover only 50% of the compensation. As such, they were granted compensation to the extent of

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Rs.1,42,000/-.

Feeling aggrieved by the extent of compensation, so granted and also, on the count of negligence, having contributed to the extent of 50% to the deceased, the appellants-claimants have assailed the Award.

The essential facts, to be noticed are that, on 05.07.2012, Vijay Pal, who was driver of the truck bearing registration No.HR-58-8062 along with conductor Ravi Kumar, was driving his truck from Yamuna Nagar to Hanumangarh, for supplying some goods. When they reached ahead of Bus Stand, Hatho, towards Narwana side, the tyre of the truck in question got punctured, as a result whereof, Vijay Pal parked his truck on the road. After changing the tyre, Vijay Pal was screwing the nuts of the wheel. Suddenly, a truck-trolla bearing registration No.RJ-07-GA-9708 driven by respondent No.1-Hari Singh, in a rash and negligent manner, came from Kaithal side and struck his vehicle against the ill-fated truck, as a result whereof, Vijay Pal suffered multiple grievous injuries, which proved fatal.

However, in reply, respondents No.1 and 2-driver and owner of the truck bearing registration No.RJ-07-GA-9708, have denied the accident in toto. Even, respondent No.3-insurance company, besides denial of the accident, had also taken various pleas about respondent No.1, to be not holding and effective driving licence, at the time of accident and also raised plea of false implication of offending vehicle by the claimants.

To so substantiate the factum and manner of accident, the appellants-claimants examined PW-2 Ravi Kumar, who was accompanying the deceased, at the time of accident. He has deposed, in consonance with the pleaded case and also deposed about the accident, to have taken place at 3.00 a.m. In his affidavit Ex.PW2/A, the said witness has also deposed that

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tyre of the ill-fated truck got punctured and both the occupants, after getting parked their truck, on one side of the road, were changing the punctured tyre. He was taking the jack out of the truck and Vijay Pal was screwing the nuts of the tyre, towards the driver side. He further deposed that in the meantime, truck-trolla bearing registration No.RJ-07-GA-9708, which was being driven by respondent No.1-Hari Singh, at a very high speed, rashly and negligently, came from Kaithal side and struck against the truck of Vijay Pal, as a result whereof, Vijay Pal sustained injuries. He further deposed about death of Vijay Pal, on account of said injuries.

Besides the same, copy of FIR has been proved as Ex.P1. Ex.P3 is the police challan, which was presented against respondent No.1-Hari Singh. Charge framed is Ex.P4 and copy of post-mortem report is Ex.P2.

In the light of the aforesaid evidence, it is pertinent to mention that learned Tribunal had reached the conclusion that even deceased Vijay Pal contributed towards taking place of the accident. However, the aforesaid observation is erroneous. Very categorically, it is the version of appellants-claimants that the truck was parked on the correct left side of the road, after the tyre of the truck got punctured. But, at the same time, it is pertinent to mention that it was at 3.00 a.m., when the accident had taken place. There is nothing in the petition, coming forth, about any steps, having taken by deceased or by Ravi Kumar, conductor, who was accompanying the deceased, at the relevant time, about any precautions taken by them, to alert the passing traffic, about the stationary truck. In the minimum, as required, the parking lights were supposed to be put 'on', but however, there is nothing coming on record, about the lights having put 'on'. Considering the

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same and also considering the fact of the challan having presented against respondent No.1-Hari Singh, who has made total denial of the accident and in fact, had not bothered to step into the witness box, the fact of the accident, as such, stands amply established, more particularly, when the offending truck had struck against the stationary truck from the backside. However, negligence, as observed aforesaid, was definitely there, on the part of deceased and his companion, as they had not put 'on' the parking lights of the ill-fated truck. But however, looking at this conduct also, the negligence, cannot be attributed to the extent of 50%, as held by learned Tribunal. In modest estimate, close to the proximate reality, the contributory negligence, is appropriately taken as 20%.

In this backdrop, now, coming to the assessment of the compensation. Learned Tribunal, while considering the deceased to be employed as Driver, had taken his earnings as Rs.4,000/- per month and considering him to be a bachelor, had deducted, the same to the extent of 50% and thus, earnings of deceased Vijay Pal was concluded to be Rs.24,000/- per annum. Considering the age of the parents of the deceased, multiplier of '11' was applied by learned Tribunal and loss of income was calculated to the extent of Rs.2,64,000/- and Rs.20,000/- was granted as funeral expenses. Further making deduction, on account of the contributory negligence to the extent of 50%, the compensation, awarded was Rs.1,42,000/-.

However, the compensation, so worked upon, definitely as per settled prevalent law, calls for re-appraisal.

At the very outset, it is pertinent to mention that it is categorical claim that the deceased was working as Driver. Even, at the time of

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accident, in question, he was driver of the ill-fated truck. Even, PW-3 Bhim Singh, in his affidavit Ex.PW3/A, has stated about employment of Vijay Pal, as driver. Though, he had stated that he used to give Rs.20,000/- per month, but however, no sufficient evidence, relating to the extent of salary, so paid, has been brought on record. Even if it be so, in the minimum, the Court is supposed to make the assessment of the earnings of the deceased, being skilled worker, as prevalent minimum wages, at the relevant time. Considering it to be so, in the modest estimate, the earnings of the deceased, can conveniently be taken to be Rs.5,000/- per month.

In the claim petition, it is asserted that deceased was 29 years old. However, in the driving licence of the deceased, which has been proved as Ex.P5, the date of birth of the deceased is mentioned to be 05.10.1981 and taking it to be so, he was about 31 years old, at the time of accident. Considering the age of the deceased, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% ought to be made, in the earnings of the deceased, on the count of 'future prospects'. Taking it to be so, the earnings comes to be Rs.5000+ 2000(40%)=Rs.7000/- per month.

Undisputedly, the deceased was bachelor, at the relevant time. Taking him to be so, as per *Pranay Sethi's case (supra)*, the deduction has to be made on the count of 'personal expenses' to the extent of 50%. Taking it to be so, the loss of income, works upon as Rs.3,500/- per month and annual comes to be Rs.42,000/-.

Further, it is also stated that it is age of the parents, which has been taken into consideration, for the application of the multiplier, but however, the age of the deceased ought to have been taken into

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consideration. Considering the age of the deceased, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '16'. So applying the multiplier of '16', the loss of dependency comes to be **Rs.42000x16= Rs.6,72,000/-**.

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)*. 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, which view, has been further endorsed in *Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327*, wherein, the Hon'ble Supreme Court, while relying upon *Magma's case (supra)*, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to *Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85*, wherein also, the Hon'ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of 'spousal consortium' for wife and 'parental consortium' for two children.

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 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 Vijay Pal, is re-computed, as herein given:-

Loss of dependency	:	Rs.6,72,000/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.8,05,100/-

As observed aforesaid, the contribution towards contributory negligence, on the part of the deceased, as now worked upon is 20%. Thus, after making deduction to the extent of 20%, the claimants are held entitled to recover Rs.8,05,100-161020(20%)=Rs.6,44,080/-.

On the enhanced amount of the compensation i.e. Rs.6,44,080/-, 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.

The impugned Award dated 06.12.2013 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

November 17, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No