IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3645-2015 (O&M) and
XOBJC-196-CII-2015
Date of Decision: November 14, 2023

Himachal Road Transport Corporation

...Appellant

VERSUS

Kartar Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Neeraj Khanna, Advocate
for the appellant.

Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates
for respondents No.1 and 2-cross objectors.

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ARCHANA PURI, J.

The present appeal has been filed by the appellant, thereby, assailing the Award dated 05.12.2014, vide which, compensation was granted by learned Motor Accident Claims Tribunal, on account of death of Amit Kashyap, in a motor vehicular accident, which took place on 11/12.04.2014.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the appellant is concerned, the same does not call for any further scrutiny, as the appellant has challenged the impugned Award only on the quantum of compensation.

On appraisal of the evidence, brought on record, learned Tribunal, vide impugned Award, had granted compensation to the extent of Rs.8,10,000/- to respondents No.1 and 2-claimants.

In the appeal, cross-objections bearing number **XOBJC-196-CII-2015** have also been filed, thereby, seeking enhancement of the compensation, while making a submission for taking earnings of the deceased as Rs.20,000/- per month.

While making assessment of the compensation, the notional earnings of deceased Amit Kashyap were taken as Rs.11,000/- per month and thereupon, considering the deceased to be a bachelor and claimants to be his parents, 50% was deducted towards personal expenses and while working upon, multiplier of '10' was applied, considering the age of the claimants and on account of annual dependency, an amount of Rs.66,000/- was granted. Besides the same, another sum of Rs.25,000/- was granted towards loss of estate, Rs.1 lakh towards love and affection and Rs.25,000/- towards funeral expenses. However, in the impugned Award dated 05.12.2014, the total of the compensation so granted was calculated as Rs.9,10,000/-, but however, there appeared to be typographical error, in total of the compensation granted on various counts, which stood corrected, vide order dated 15.04.2015 and the compensation, as such, granted was to the extent of Rs.8,10,000/-.

As per settled prevalent law, the compensation, so granted, requires re-appraisal. The main contention raised by learned counsel for the appellant is that the notional earning of Rs.11,000/-, as taken by learned

Tribunal is on higher side. Keeping in view the same, it is pertinent to mention that certificate of secondary school examination of the deceased has been proved as Ex.P4 and therein, the date of birth is mentioned as 03.10.1985 and thus, at the relevant time of accident, which took place on 11/12.04.2014, the deceased was about 29 years old. Furthermore, claimant No.1-Kartar Devi, who is mother of deceased, has deposed about Amit Kashap to be a diploma holder from IATA/UFTAA Foundation and EBT Course and copy of certificate is Ex.P8. He had also passed test in trade of Information Technology and Electronics System Maintenance and copy of certificate is Ex.P7. Besides the same, also deceased was student of BA. IInd year through correspondence from Panjab University, Chandigarh. Copy of Result-cum-Detail Marks certificate is Ex.P5.

Though, learned counsel for the appellant has submitted that the requisite documents, as such, cannot be taken into consideration, but however, the aforesaid submission is not tenable. All the requisite documents were tendered into evidence by mother of the deceased, while she stepped into witness box as PW-1 and at that time, no objection to the same has been taken. Otherwise also, considering the Motor Vehicles Act to be benevolent piece of legislation, these documents, coming from the proper source, as such, can be taken into consideration, even though, these have been simply tendered into evidence.

Furthermore, it is pertinent to mention that in the claim petition, it has been categorically stated that the deceased was working in IBM, IT Park, U.T. Chandigarh and he left the job before the accident for better prospects. Even, mother of the deceased, namely Kartar Devi, in her affidavit Ex.PW1/A, has deposed about the deceased to be earlier working in IBM, I.T. Park, U.T. Chandigarh, at monthly salary of Rs.11,000/-. Not only this, even certificate issued by IBM, Ex.P2, states about deceased Amit Kashyap to have worked with IBM Daksh Business Process Services Private Limited from 22.12.2010 to 20.09.2011 and his appointment letter is Ex.P3, which states about his appointment to the position of Customer Care Executive in Band 3. The salary certificate of Amit Kashyap also shows that his salary was Rs.11,000/- per month, which also contains clause of earning potential, it states about maximum to be Rs.12,442/-. No doubt, as pointed by learned counsel for the appellant that the deceased had left the job, prior to his death in the accident in question, but however, it matters not much. From the educational input, as evident, from the certificates, coming on record and also considering that deceased was simultaneously, while working also, pursuing his graduation through correspondence, it becomes amply clear that his chances of growth in life were bright.

Considering the same and also considering the earnings of the deceased, way back in 2010-2011 to be Rs.11,000/- per month, the notional income as taken by learned Tribunal cannot be said to be on higher side. Even though, learned counsel for the respondents No.1 and 2-claimants also insisted that earnings of the deceased be taken as Rs.20,000/- per month, but however, there is no such material, coming on record, to establish about the earnings of the deceased, at the relevant time to be Rs.20,000/- per month. Considering the circumstances, as spelt out, from the evidence produced on record, the extent of earnings, so taken by the Tribunal is appropriate, for the purpose to award just compensation.

Taking it to be so, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 40%, on the count of 'future prospects' has to be made and total amount of earnings comes to be Rs.11000+4400(40%)=**Rs.15,400/-** per month.

Undisputedly, the deceased was a bachelor and claimants are parents of the deceased. Considering it to be so, deduction has to be made to the extent of 50%, on the count of 'personal expenses' and while doing so, the loss of dependency comes to be Rs.7,700/- per month and annual comes to be **Rs.92,400/-**.

However, learned Tribunal had erroneously applied the multiplier of '10', while considering the age of the parents, but however, as per ***Pranay Sethi's case (supra)***, the age of the deceased should be the basis for applying the multiplier. Considering the same, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, considering the age of the deceased to be 29 years, the appropriate multiplier to be applied in the present case is '**17**' and after, so applying this multiplier, the loss of dependency comes to be Rs.92,400x17=**Rs.15,70,800/-**.

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)***.

Though, learned Tribunal had granted Rs.25,000/- towards 'loss of estate', Rs.1 lakh towards 'love and affection' and Rs.25,000/- towards 'funeral expenses', but however, these amounts are required to be scaled down. Even though, learned Tribunal had granted compensation to the extent of Rs.1 lakh, on the count of 'love and affection' to the claimants, but however, it is pertinent to make reference to the decision rendered by the Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***, wherein, it is laid down 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, which view was further endorsed in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***.

In ***Magma's case (supra)***, 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)*, there has to be addition of 10% after every three years from the passing of the judgment, which has since passed by. Thus, on the counts of 'loss of consortium', 'loss of estate' and 'funeral expenses', at first instance, upto three years, it was Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively and for next three years, the compensation was enhanced by 10% to Rs.44,000/-, Rs.16,500/- and Rs.16,500/- respectively, on the aforesaid three counts. After 31.10.2023, the aforementioned amounts, stands further extended by another 10% and now, on the aforesaid counts, it works out to be **Rs.48,400/-**, **Rs.18,150/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to dependents, on account of death of Amit Kashyap, is re-computated, as herein given:-

Loss of dependency	:	**Rs.15,70,800/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.17,03,900/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.17,03,900-8,10,000=Rs.8,93,900/-**. On the enhanced amount of the compensation i.e. **Rs.8,93,900/-**, respondents No.1 and 2-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the cross objections, till realization of the enhanced amount of compensation. The enhanced compensation, as now awarded, be apportioned between respondents No.1 and 2-claimants, equally.

The impugned Award dated 05.12.2014 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the appeal i.e. FAO-3645-2015 stands dismissed, whereas, cross-objections filed by the claimants i.e. XOBJC-196-CII-2015 stands partly allowed.

November 14, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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