2023:PHHC:083748

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6291-2014 (O&M)
Date of Decision: July 04, 2023

Manisha and others

...Appellants

VERSUS

Ram Mehar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Chirag Kundu, Advocate
for the appellants.

Mr.Balkar Singh, Advocate
for respondent No.2.

Mr.Ivanpreet Singh, 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, on account of death of Surender, in a motor vehicular accident, which took place on 19.10.2012.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 15.02.2014, had granted compensation to the extent of Rs.9,89,000/-to the appellants-claimants, who are widow, minor son and parents 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 agricultural work and dairy farming. Also, it is submitted that deceased was Manager of three Transport Co-operative Societies, namely, The Talu Laxmi Co-operative Society Ltd., Bhiwani, The Kheri Daultpur Society Limited, Bhiwani and The Bhiwani Hind Co-operative Society Ltd., Bhiwani and from all the aforesaid sources, he was earning Rs.35,000/- per month. Also, it is further submitted that erroneously, the earnings of the deceased has been taken at par with mere casual labourer and the assessment of the earnings is on lower side and as a result thereof, the compensation, so worked upon, is quite meagre. Moreover, it is submitted that addition on the count of 'future prospects' is also required to be made. No compensation has been awarded on the count of 'loss of estate' also.

Thus, learned counsel for the appellants made a prayer for extensive enhancement of compensation.

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. He has further submitted that the compensation granted under the conventional heads, calls for reduction, in view of the latest settled proposition of law.

Thus, he submits that the appeal sans merit and the same deserves to be dismissed.

It is pertinent to mention that in the claim petition, it is specific claim of the appellants-claimants that the deceased was indulging into agricultural work, dairy farming and was Manager of three Transport Co-operative Societies, detail whereof, has been given aforesaid. The earnings of the deceased were stated to be Rs.35,000/- per month. However, to substantiate the avocation, so followed by the deceased, widow of the deceased namely Manisha had stepped into witness box as PW-3 and her affidavit is Ex.PW3/A. Even, one Surender Singh had been examined as PW-4, to establish the employment of the deceased with the Transport Co-operative Societies and his affidavit is Ex.PW4/A.

However, very true, as so observed by learned Tribunal that there is no documentary evidence, coming on record, about indulgence of the deceased in agricultural work, dairy farming and about his employment with the Co-operative Societies. No doubt, the widow of the deceased has stepped into witness box and has deposed in consonance with the pleaded case, but however, if the deceased was indulging in the agricultural work, may be he was owner of the agricultural land or was cultivating the same on contract basis or in any other manner, relating to the same, no such, satisfactory evidence has come on record. There is only oral testimony of widow of the deceased to this effect, which does not satisfactorily establish about the indulgence of the deceased in the agricultural pursuit. Similarly, even though, PW-4 Surender Singh has been examined, whose affidavit is Ex.PW4/A, but however, in his affidavit also, though the said witness has stated about the deceased to be working as Manager in three Co-operative Societies as detailed in his affidavit, but however, no employment record, as such, has been proved. Rather, the said witness, while facing cross-examination, had stated that he has no concern with the Societies as mentioned in his affidavit and he has no knowledge regarding record of the employment. In view of this scanty evidence, the income of the deceased was considered at par with mere casual labourer and on the basis thereof, the compensation was further worked upon.

However, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined. The measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Yardsticks of compensation should not be so abysmal, as to lead one to question, whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Thus, it is required that the Court should be mindful of the circumstances, as spelt out from the evidence and reach the conclusion about extent of earnings, on the basis thereof. While computing the compensation, the approach of the Court has to be broad based. Needless to say, it would involve some guess work, as there cannot be any mathematical exactitude or a precise formula, to determine the quantum of compensation. In determination of compensation, the fundamental criteria of '**just compensation**' should be inhered.

In this backdrop, now adverting to the case in hand. It is true as already observed aforesaid that the widow of the deceased, in her affidavit, has categorically deposed about the indulgence of the deceased into agricultural work and dairy farming. She has also deposed about the deceased to be working in the Co-operative Societies. Even though, as already observed aforesaid, no documentary evidence, as such, has come on record, but however, in these circumstances, learned Tribunal had considered the earnings of the deceased as that of a casual labourer.

At this juncture, it is pertinent to mention that at the relevant time, the minimum wages as available for the unskilled labourer in the State of Haryana was Rs.4967/-. However, considering the assertion of avocation, so followed by the deceased, in view of the testimony of the witnesses examined by the claimants, the extent of monthly earnings so taken by learned Tribunal, to be Rs.6,000/-, is just and amount reasonable.

In the claim petition, the deceased was asserted to be 34 years old. The matriculation certificate of the deceased has been proved as Ex.P3. Perusal of the same reveals that the date of birth of the deceased was 08.01.1979. So calculating, at the time of his death, the deceased is established to be 34 years of age. Thus, learned Tribunal has rightly taken the age of the deceased as 34 years.

As already observed aforesaid, the earnings of the deceased are taken to be Rs.6,000/- per month. Considering it to be so, 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.6000-1500(1/4th)=Rs.4,500/-**.

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 34 years, **40%** addition has to be made as future prospects and thus, the amount comes to be **Rs.4500+1800(40%)=Rs.6,300/-** per month. Therefore, annual dependency comes to be **Rs.6300x12=Rs.75,600/-**. The suitable multiplier, as per ***Sarla Verma's case (supra)***, is '**16**'. Thus, after applying the multiplier of '**16**', the loss of dependency comes to be **Rs.75,600x16= Rs.12,09,600/-**.

It is pertinent to mention that learned Tribunal had granted Rs.1 lakh, on the count of 'loss of consortium'. Further, learned Tribunal has awarded a sum of Rs.25,000/- as 'funeral expenses', which needs reduction, as per the latest settled law.

In ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and ***United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410***, it has been laid down by the Hon'ble Supreme Court that consortium is not limited to '**spousal consortium**' and it also includes '**parental consortium**' and '**filial consortium**'. It was held that apart from spousal consortium, 'parental' and 'filial' consortium is also payable. Endorsing this view, in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

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.12,09,600/-**, '**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.14,18,600**/-. As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.14,18,600-9,89,000 =Rs.4,29,600/-**.

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.1,29,600/-** shall be paid to appellant-claimant No.1-Manisha and a sum of **Rs.1 lakh** each, shall be paid to appellants-claimants No.2 to 4, namely Kartik, Smt.Bhanti Devi and Daya Singh. Keeping in view the interest rates, having reduced drastically, on the enhanced amount of the compensation i.e. **Rs.4,29,600/-**, 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.

Accordingly, the impugned Award dated 15.02.2014 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same.

With the above observations, the present appeal stands allowed.

July 04, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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