2023:PHHC:135297

# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-4865-2016 (O&M)**
**Date of Decision: October 17, 2023**

Raj and others

...Appellants

VERSUS

Hem Chander and others

...Respondents

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

Present: Mr.R.K.Chaudhary, Advocate
for the appellants.

Mr.R.C.Kapoor, Advocates
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 Rajbir Singh, in a motor vehicular accident, which took place on 29.08.2014.

On appraisal of the evidence, brought on record, learned Tribunal, vide impugned Award dated 01.12.2015, had granted compensation to the extent of Rs.6,89,000/- to the appellants-claimants, on account of death of Rajbir Singh.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable to challenge the Award and thus, this issue does not warrant any further scrutiny.

It is the claim of the appellants-claimants that Rajbir Singh was 44 years old, at the time of accident and he was employed as ‘Mason’ and earning Rs.15,000/- per month. In the light of the same, it is submitted that learned Tribunal has erroneously considered the deceased to be working as daily wager and his earnings have been wrongly assessed to be Rs.4,500/- per month. Beside the same, also considering number of the appellants-claimants, who were dependent upon the deceased, it is submitted that deduction, on account of ‘personal expenses’ to the extent of 1/3rd has been wrongly made. Further, it is submitted that addition, on the count of ‘future prospects’ ought to be made. Besides the same, all the appellants-claimants are entitled to compensation, on the count of ‘loss of consortium’. As such, a prayer has been made for acceptance of the appeal and re-computation of the compensation.

On the other hand, learned counsel for the Insurance Company has submitted that looking at the scanty evidence, coming on record, the compensation, so worked upon is just and reasonable and the same does not call for further enhancement. Thus, he submits that the appeal sans merit and the same deserves to be dismissed.

In view of the submissions so made, record has been perused by this Court.

It should be noted that on account of no evidence, coming on record, with regard to the avocation of ‘Mason’ followed by the deceased, the earnings of the deceased had been taken as daily wager and it has been assessed to be Rs.4,500/- per month. To the same, the deduction, on the count of 'personal expenses' has been taken to be 1/3rd and keeping in view the age of the deceased, multiplier of '14' has been applied and thereupon, on the count of 'loss of dependency', the compensation has been worked upon as Rs.5,04,000/-. Besides the same, on the count of 'loss of consortium', Rs.1 lakh has been granted to widow, namely Raj. Also, on the count of 'last rites' compensation has been granted to the extent of Rs.25,000/- and another Rs.10,000/- has been granted on the count of 'transportation' and Rs.50,000/- has been granted, on the count of 'love and affection'. In total, compensation which has been granted is Rs.6,89,000/-.

Considering the same, however, as per settled prevalent law, the compensation, so worked upon by learned Tribunal calls for re-appraisal. So far as, avocation of the deceased is concerned, on account of no satisfactory evidence, coming on record, learned Tribunal had rightly concluded about the earnings of the deceased as daily wager. However, the extent of earnings, so worked upon by learned Tribunal is on lower side. As per minimum wages, for unskilled workers, existing in the State of Haryana, at the relevant time, the earnings, so assessed is on lower side. At that time, the prevalent minimum wages were Rs.5,639/- per month. As such, the earnings of the deceased is taken as Rs.5,639/- per month. To the said amount, on account of future prospects, addition has to be made. It is the specific claim of the appellants-claimants that the deceased was 44 years old. Even though, in the post-mortem report, the age of the deceased has been mentioned as 45 years, but however, in the Voter ID card, the date of birth of the deceased has been mentioned as 06.06.1970. To the similar effect, is the recital on the Aadhaar Card, copy whereof is Ex.P7. So, taking this to be the date of birth of the deceased, at the relevant time of accident, the deceased is established to be 44 years old. Considering this to be the age of the deceased, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 25% 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.5,639+ 1410(25%)=Rs.7,049/-.

Even, learned Tribunal had applied the deduction to the extent of 1/3rd, on the count of 'personal expenses', but however, from the evidence on record, it stands established that besides the widow, there were four children of the deceased, who were unmarried and dependent upon the deceased. Considering it to be so, the total number of dependents upon the deceased are five in number and that being so, 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 1/4th. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.7049-1762(1/4th)=Rs.5287/- and annual dependency comes to be Rs.5287x12=**Rs.63,444/-**.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)*** the multiplier '14', applied by learned Tribunal is appropriate one. So applying the multiplier of '**14**', the loss of dependency comes to be **Rs.63444x14= Rs.8,88,216/-**.

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)***, after making addition of 10%, after three years from the passing of the judgment, which has since passed by, the amount payable, on the count of ‘**loss of consortium**’ is to the extent of **Rs.44,000/-** to each of the claimant and for the ‘**loss of estate**’ as well as ‘**funeral expenses**’, it is **Rs.16,500/-**, on each count.

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

| | | |
|---|---|---|
| **Loss of dependency** | : | **Rs.8,88,216/-** |
| **Loss of consortium** | : | **Rs.2,20,000/-** |
| **Loss of estate** | : | **Rs.16,500/-** |
| **Funeral expenses** | : | **Rs.16,500/-** |

**Total : Rs.11,41,216/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,41,216-6,89,000=Rs.4,52,216/-**. On the enhanced amount of the compensation i.e. **Rs.4,52,216/-**, 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-Raj is held entitled to Rs.1,52,216/- and appellants-claimants No.2 to 5 are held entitled to Rs.75,000/- each.

The impugned Award dated 01.12.2015 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.

**October 17, 2023** **(ARCHANA PURI)**
Vgulati **JUDGE**

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