IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8746-2014 (O&M)
Reserved on : 31.7.2023
Date of Decision:- 20.10.2023

Paramjit Kaur and Ors.

… Appellants

Versus

Gurkirpal Singh & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Argued by :-
Mr. Ravi Gakhar, Advocate
for the appellant.

Mr. Amit Kundra, Advocate
for respondents No.3.

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KARAMJIT SINGH, J.

1. Appellants/claimants have filed this appeal against the Award dated 13.3.2014 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (in short, “the Tribunal”) whereby the claim petition filed by claimants under Section 163-A of the Motor Vehicles Act (In short, “the Act”) has been allowed and compensation worth ₹3,26,300/- is awarded to the claimant on account of death of Sukhjit Singh in a motor vehicle accident.

2. The brief facts of the case are that Sukhjit Singh was 52 years of age and appellant No.1 is his widow while appellants No.2 to 4 are his children all of whom were dependent on the income of deceased. That

on 13.2.2012, deceased was coming from Patiala to his village Chanarthal Kalan in a car No.CH04-J-1213, which was driven by respondent No.1-Gurkirpal Singh, while the deceased was sitting along side the driver's seat. At about 7 p.m., when they reached near bus stop of village Naulakha, one wild animal suddenly came on a road and respondent No.1 in order to save the said animal, applied brake and the car suddenly turned towards right side and fell in a ditch. Sukhjit Singh sustained grievous injuries and was taken to Rajindera Hospital Patiala, where he died. The matter was reported to the police and DDR No.15 dated 14.2.2012 was registered under Section 174 Cr.P.C. in Police Station Mulepur. The aforesaid car was owned by respondent No.2 and was insured with respondent No.3. That deceased was doing labour work and his monthly income was ₹3,300/-. The claimants made prayer for grant of compensation worth ₹20 lac along with interest.

3. The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement, wherein the factum of accident was admitted. However, it was pleaded that the accident had not taken place due to negligence of respondent No.1.

4. Insurance company filed separate written statement taking preliminary objections that driver of the car was not having valid driving license and there were no valid documents of the car with respondents No.1 and 2. On merits, the factum of accident was denied and it was pleaded that deceased was more than 60 years of age and his alleged

income was also denied and it was prayed that the claim petition be dismissed.

5. On the pleadings of the parties, following issues were framed:-

i. Whether on 13.02.2012 at about 7:00 p.m. in the area of village Naulakha bus stand Sukhjit Singh son of Sunder died due to rash and negligent driving of the car No.CH04-J-1213 by respondent No.1? OPP

ii. Whether respondent No.1 was not holding a valid and effective license at the time of accident? OPR-3

iii. Whether offending vehicle was not holding a valid registration certificate, fitness certificate, route permit on the date of accident? OPR3

iv To what amount of compensation the claimants are entitled to and from whom? OPP

v. Relief

6. The counsel for the claimants examined CW-1 Paramjit Kaur; CW-2 HC Gurdev Singh and proved on record copy of post-mortem report Ex.C1, death certificate Ex.C2, ration card Ex.C3 and DDR Ex.C7.

7. On the other hand counsel for respondents No.1 and 2 examined RW-1 Gurkirpal Singh and placed on record copy of driving license Ex.R2 and copy of insurance cover note Ex.R1. Counsel for respondent No.3 tendered insurance policy Ex.R4.

8. After hearing the counsel for the parties, the Motor Accident Claims Tribunal, Fatehgarh Sahib passed Award of ₹3,26,300/- in favour of the appellants and against the respondents and liability of respondents was held to be joint as well as several.

9. The present appeal has been filed by the claimants seeking enhancement of the awarded amount.

10. The counsel for the appellants has submitted that the Motor Accident Claims Tribunal, did not grant any compensation on account of loss of love and affection and future prospects. That even consortium was not granted to each of the claimants as per the law laid down in **Magma General Insurance Company Ltd.** v. **Nanu Ram @ Chuhru Ram,** (2018) (18) SCC 130. The counsel for the appellants has further submitted that funeral expenses awarded by the Tribunal also requires to be enhanced. The counsel for the appellants while referring to **Puttamma and Ors.** v. **K.L. Narayana Reddy and Ors.** 2014(1) RCR(Civil) 443, wherein the Hon'ble Supreme Court has observed that 2nd Schedule to Section 163-A to Motor Vehicles Act has become redundant as cost of living has gone up manyfold. The counsel for the appellants has further contended that the appellants are entitled to get compensation under conventional heads as per decision of Hon'ble Suprme Court in **National Insurance Company** v. **Parney Sethi,** 2017(4) RCR(Civil) 1009. It was further contended that the interest awarded @ 7% per annum by Motor Accident Claims Tribunal, Fatehgarh Sahib is also on lower side and it should be at the rate of 12% per annum at least.

11. In support of his contentions the counsel for the appellants has also placed reliance on on the judgment passed by Hon'ble Supreme Court in **Kurvan Ansari @ Kurvan Ali and Anr.** v. **Shyam Kishore Murmu and Anr.** 2022(1) RCR (Civil) 165, wherein appellants were

also held entitled to sum of ₹40,000/- each towards filial consortium and ₹15,000/- towards funeral expenses and decision of the Coordinate Bench in **Manpreet Kaur** v. **Sukhdev Singh and anr.** 2021(4) RCR (Civil) 71, wherein compensation awarded by the Tribunal was enhanced to ₹ 5,05,000/- in a case relating to death of 9 years old child.

12. The appeal is resisted by the counsel for the insurance company, who has submitted that compensation awarded by the Motor Accident Claims Tribunal does not require any enhancement. The counsel for insurance company has further submitted that in the instant case compensation is to be calculated as per 2nd Schedule of Section 163-A of Motor Vehicle Act. It has been further submitted that the appellants cannot take any benefit of the fact that in **Puttamma's** case (supra), the Hon'ble Apex Court gave observation that keeping in view the cost of living, the Central government is required to amend the 2nd Schedule of Section 163-A of Motor Vehicle Act. The counsel for the insurance company has further submitted that the appellants cannot be granted compensation on the basis of future prospects and filial consortium. In support of his contention the counsel for the insurance company has placed reliance upon decision of Jharkhand High Court in **Smt. Subhdra Devi and Ors.** v. **Ashok Kumar Saw and ors.** 2022 AAC 1893. The counsel for the insurance company while referring to law laid down by the Hon'ble Supreme Court in **Shri Ram General Insurance Company Ltd.** v. **Bhagat Singh Rawat and Ors., Civil Appeals No.2410-2412 of 2023** decided on

27.3.2023, submits that amount of ₹40,000/- on account of filial consortium is not to be counted per the legal heir. The counsel for the insurance company while concluding his arguments submits that the appeal deserves to be dismissed.

13. I have considered the submissions made by counsel for the parties.

14. Admittedly, no appeal/cross objection has been filed by the owner, driver or the insurance company of the offending vehicle against the impugned award dated 13.3.2014 passed by the Tribunal whereby all of them were held jointly and severally liable to pay the amount of compensation to the appellants-claimants. Present appeal has been filed by the appellants-claimants seeking enhancement of the compensation awarded by the Tribunal. It being so, the question as to whether the insurance company is liable to pay any compensation in the present case is not dealt with in the present appeal.

15. The findings recorded by the Tribunal with regard to issues No.1, 2 and 3 remain unchallenged. The only issue involved in the present appeal is as to whether the compensation awarded by the Tribunal to the appellants-claimants requires enhancement or not.

16. The deceased was 52 years of age and the appellants being widow and children are legal heirs of deceased-Sukhjit Singh. They filed the claim petition under Section 163-A of the Act and as per 2nd schedule of Section 163-A of the Act, ceiling limit of the income of the victim is ₹ 40,000/- per annum. In the present case, the annual income of the deceased was rightly considered as ₹ 39,600/-. It is evident that in the

present case, widow along with her 3 children were dependent on the deceased. So, number of dependent family members is 4 and as such, as per law laid down in **Sarla Verma and others** v. **DTC and others,** 2009 ACJ 1298, deduction should be 1/4th in place of 1/3rd calculated by the Tribunal. So, the annual dependency of the appellants-claimants on the deceased comes out to be ₹ 29,700/-. The deceased being 52 years of age, multiplier of 11 was rightly applied by the Tribunal and thus, total dependency of the appellants on the deceased comes out to be ₹ 3,26,700/- in place of ₹ 3,16,000/- as assessed by the Tribunal.

17. The Tribunal awarded ₹ 2000/- towards funeral expenses, ₹ 2500/- towards loss of estate and ₹ 5000/- to the widow for loss of consortium. The Motor Vehicles Act is a beneficial legislation aimed of providing relief to the victims or their families. Hon'ble Supreme Court in **Pranay Sethis' case** (supra), held that in death case, the dependents are entitled also to get compensation under conventional heads : loss of estate- ₹ 15,000/-, loss of consortium-₹ 40,000/- and funeral expenses-₹ 15,000/- and the same are to be enhanced by 10% after every 3 years. As per the ratio laid down in **Nanu Ram @ Chuhru Ram's** case (supra), the children are entitled to get parental consortium. However, the claimants are not entitled to get any additional compensation under the head of future prospects as the present petition is filed under Section 163-A of the Act and in the 2nd schedule to Section 163-A of the Act, there is no provision to provide compensation on account of future prospects of the deceased.

18. In light of the aforesaid settled position of law, appellant No.1 (widow) is entitled to get ₹ 19,500/- as loss of estate, another ₹ 19,500/- as funeral expenses and ₹ 52,000/- as loss of consortium while appellants No.2 to 4 are entitled to get parental consortium worth ₹ 40,000/- in equal shares.

19. Thus, the total amount of compensation comes out to be ₹ 4,57,700/-. The enhanced amount of compensation comes out to be ₹ 1,31,400/- which the appellants are entitled to get from the owner, driver and the insurance company whose liability was held to be joint and several by the Tribunal. The rate of interest of 7% awarded by the Tribunal is just and reasonable and does not require any enhancement.

20. For the foregoing reasons, the present appeal is partly allowed and the award passed by the learned Tribunal is enhanced by ₹ 1,31,400/- along with interest as has been awarded by the Tribunal. Enhanced amount of compensation is to be paid by the owner, driver and the insurance company of the car in question along with interest as has been awarded by the Tribunal till the date of realization. The liability of respondents is joint as well as several.

(KARAMJIT SINGH)
JUDGE

20.10.2023
Gaurav Sorot/Paritosh Kumar

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No