2023:PHHC:079687

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7470-2016 (O&M)
Date of Decision: May 29, 2023

Rajo and others

...Appellants

VERSUS

Sunil Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ram Pal Verma, Advocate
for the appellants.

Mr.D.K.Prajapati, Advocate
for respondent No.3-Insurance Company.

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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 Sharvan alias Sawan, in a motor vehicular accident, which took place on 03.10.2014.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 26.10.2015, had granted compensation to the extent of Rs.15,77,701/-to the appellants-claimants, who are widow and children 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 dairy farming, agricultural work and business of cattle and about his earnings to be to the extent of Rs.50,000/- per month. Also, it is further submitted that precisely, on this account, while taking the deceased to be at par with mere casual labourer, the assessment of the earnings is on lower side and as a result thereof, the compensation, so worked upon, is quite meagre. Besides the same, even compensation ought to have been paid under the conventional heads, as per settled law.

Thus, learned counsel for the appellant 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 scanty evidence, coming on record, 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.

However, in view of the submissions, so made, it is pertinent to mention that in the claim petition, it is specific claim of the appellants-claimants that the deceased was indulging into dairy farming, business of cattle and was an agriculturist and that his earnings were Rs.50,000/- per month. To so substantiate, the avocation followed by the deceased, the widow of deceased namely, Rajo-appellant-claimant No.1, stepped into witness box as PW-1 and in her affidavit Ex.PW1/A, she had stated about the indulgence of the deceased in dairy farming, agricultural work and business of cattle and that he used to earn Rs.50,000/- per month, from the said source.

Furthermore, even another witness namely, Naresh examined as PW-2, also in his affidavit Ex.PW2/A, has stated about the avocation so followed by the deceased and also about his earnings to be to the extent of Rs.50,000/- per month.

However, very true, as so observed by learned Tribunal that there is no documentary evidence, coming on record, about indulgence of the deceased in dairy farming, agricultural work and business of cattle. In these circumstances, the income of the deceased was considered at par with mere casual labourer and it was assessed as Rs.8000/- per month i.e. Rs.96,000/- per annum and on that basis, the compensation was, so worked upon.

Before proceeding further, 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 that PW-1 Rajo, appellant-claimant No.1 as well as PW-2 Naresh, while in their respective affidavits, have though stated about the indulgence of the deceased into dairy farming, agricultural work and business of cattle and also about earnings of the deceased to be Rs.50,000/- per month, but however, rightly it has been, so observed by learned Tribunal that there is no satisfactory evidence, coming on record, about this extent of earnings of the deceased.

However, at the same time, learned Tribunal also erred, while considering the deceased, at par with mere casual labourer and on that basis, assessing his earnings to be Rs.8000/- per month. If no documentary evidence has been adduced on record regarding extent of earnings, so coming forth, it does not *ipso facto* lead to the conclusion, about the deceased to be working as mere casual labourer.

In the present case, one should take into consideration the very fact of the deceased having remained admitted in Max Super Speciality Hospital, New Delhi, soon after the accident. PW-5 Ajay Singh Rawat, Medical Record Technician has deposed about the victim Sawan to be admitted in Max Super Speciality Hospital, New Delhi on 03.10.2014 and was discharged on 08.10.2014 and he proved the bills Ex.P1 and P2 and also proved the treatment summary, which is Ex.P36. Likewise, PW-6 Jai Parkash, Record Keeper, Dr.RML Hospital, New Delhi, has also deposed about admission of Sawan in the hospital on 08.10.2014 and that he expired on 13.10.2014. He proved the record and death summary, which is Ex.P37. If a victim, soon after the accident, remains admitted in private hospital of repute like Max Super Speciality Hospital, it reflects that he had affluent background or in the minimum, belonging to middle class of the society and if it be so, he cannot be equated with mere casual labourer.

As evident, the total of the medical expenses incurred during the hospitalization is to the extent of Rs.4,39,701. The fact of admission of the deceased, soon after the accident in Max Hospital and extent of expenditure incurred on his medical treatment, in itself, is a big pointer to reflect about the deceased to be having reasonably good financial background. Thus, considering this very fact, by making some guess work, proximate to the reality, the earnings of the deceased, ought to be taken much above the casual labourer and it can conveniently be taken to be Rs.10,000/- per month. In view of this conclusion, the compensation, so worked upon by learned Tribunal, calls for re-computation.

Even though, in the claim petition, it has been averred that deceased was 37 years old, but however, no satisfactory evidence, relating to the date of birth of the deceased, as such, has come on record. Any how, in the medical record, which has been proved in evidence, multiple times, the age of deceased Sharvan @ Sawan has been mentioned as 45 years. Thus, learned Tribunal has rightly taken the age of the deceased as 45 years.

As already observed aforesaid, the earnings of the deceased are taken to be Rs.10,000/- 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.10000-2500(1/4th)=Rs.7,500/-**.

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 45 years, **25%** addition has to be made as future prospects and thus, the amount comes to be **Rs.7500+1875(25%)=Rs.9,375/-** per month. Therefore, annual dependency comes to be **Rs.9375x12=Rs.1,12,500/-**. The suitable multiplier, as per ***Sarla Verma's case (supra)***, is '**14**'. Thus, after applying the multiplier of '**14**', the loss of dependency comes to be **Rs.112500x14= Rs.15,75,000/-**.

Besides the aforesaid, it is pertinent to mention that on the count of '**loss of consortium**', the appellants-claimants are entitled to **Rs.44,000/-** each, total of which, comes to be **Rs.1,76,000/-**. Apart from this, on account of '**loss of estate**' and '**funeral expenses**', the appellants-claimants are entitled to **Rs.16,500/-** on each count.

Accordingly, the appellants-claimants are held entitled for compensation as under:-

Loss of dependency	:	**Rs.15,75,000/-**
Medical bills	:	**Rs.4,39,701/-**
Loss of consortium	:	**Rs.1,76,000/-**
Loss of estate	:	**Rs.16,500/-**

Funeral expenses	:	**Rs.16,500/-**
Total	:	**Rs.22,23,701/-**

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.22,23,701-15,77,701 =Rs.6,46,000/-**.

The amount of enhanced compensation, as now awarded, shall be apportioned amongst the appellants-claimants, as ordered by learned Tribunal. Keeping in view the interest rates, having reduced drastically, on the enhanced amount of the compensation i.e. **Rs.6,46,000/-**, 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 26.10.2015 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.

May 29, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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