IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-971-2015 (O&M)

Bharti Axa General Insurance Company Ltd.
...Appellant

VERSUS

Neelam and others
...Respondents

(ii) FAO-2959-2015 (O&M)

Neelam and others
...Appellants

VERSUS

Vinay Kumar Lamba and others
...Respondents

Date of Decision: December 21, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sachin Gupta, Advocate,
for the appellant (in FAO-971-2015) and
for respondent No.3 (in FAO-2959-2015).

Ms.Varuna Singh and Ms.Mamta, Advocates
for respondents No.1 to 4 (in FAO-971-2015) and
for the appellants (in FAO-2959-2015).

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ARCHANA PURI, J.

These two appeals have been filed to assail the quantum of compensation, granted by learned Tribunal, on account of death of Vijay Malik, in a motor vehicular accident, which took place on 22.09.2013.

FAO-971-2015 has been filed by the insurance company, thereby, seeking reduction of the compensation awarded by learned Tribunal, whereas, **FAO-2959-2015** has been filed by the appellants-claimants, for seeking enhancement of the compensation.

The essential facts, to be noticed, are as follows:-

That, on 22.09.2013, at about 7.00 p.m., Vijay Malik (since deceased) along with his son namely Rohit Malik had gone to native village Bhigan, on motorcycle bearing registration No.HR-10T-5872, for necessary work, which was being driven by Rohit Malik and Vijay Malik was pillion rider. After finishing work, at about 7.30 p.m., they started journey for their home. When they reached near Park Blue Hotel (under construction), G.T. Road, Sonipat, one motorcycle bearing registration No.HR-10T-2105, which was driven by respondent-Vinay Kumar Lamba, at very high speed, in rash and negligent manner, without observing the traffic rules, struck behind the motorcycle of the deceased, and as a result of this striking, Vijay Malik, fell down from the motorcycle and his head struck against the road, as a result whereof, he died instantaneously.

It is categoric claim of the appellants-claimants about the accident to have taken place, due to rash and negligent driving of motorcycle bearing registration No.HR10-T-2105, driven by respondent-Vinay Kumar Lamba.

Considering the testimonies of the witnesses examined by the appellants-claimants and the documents, adduced in evidence, it was concluded by learned Tribunal about the accident to have taken place, on account of rash and negligent driving of the offending motorcycle bearing registration No.HR10-T-2105, as a result of whereof, injuries were caused on the person of Vijay Malik, which proved fatal.

It is the claim of the appellants-claimants that the deceased was running his business in the name and style of Vijay Export House and was having 2 acres of agricultural land and was earning a sum of Rs.50,000/- per month.

Also, to establish the avocation of the deceased and the extent of his earnings, the appellants-claimants have examined PW-1 Vishal Batra, Chartered Accountant, who deposed about filing income tax returns of Vijay Malik, for the financial years 2009-10, 2010-11 and 2011-12, which are Ex.P1 to Ex.P3. It was observed about gross total income of the deceased to be Rs.1,45,000/-, Rs.1,54,000/- and Rs.2,03,000/- respectively, in the assessment years of the returns Ex.P1 to Ex.P3. On the basis thereof, it was concluded that gross income of the deceased was increasing annually. Thereupon, the total annual income of the deceased was considered as Rs.2,03,000/-, as depicted in his last income tax return, for the assessment year 2012-13. Also, it was concluded about the age of the deceased to be 50 years, at the relevant time and multiplier of '13' was applied. While making deduction of 1/4th as personal and living expenses, the loss of dependency was worked upon as Rs.19,79,250/-. Besides the same, another Rs.5,000/- was given as 'funeral expenses' and Rs.7,500/- towards 'loss of estate'. Furthermore, on the count of 'loss of consortium', an amount of Rs.1 lakh was paid. In total, the appellants-claimants were held entitled to compensation of Rs.20,91,750/-.

However, being dissatisfied with the extent of compensation granted by learned Tribunal, both the claimants as well as the insurance company have filed the rival appeals, as noted aforesaid.

Learned counsel for the parties heard.

At the very outset, learned counsel for the insurance company has submitted that the compensation, so worked upon by learned Tribunal, as aforesaid, calls for re-computation, as per the prevalent settled law. Firstly, it is submitted that the age of the deceased has been taken to be 50 years, but however, taking the date of birth of the Vijay Malik to be 19.09.1963, he was above 50 years and therefore, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier to be applied is '11', instead of '13', as applied by learned Tribunal. Also further, it is submitted that learned Tribunal fell in error, while taking into consideration the entire extent of earnings, as depicted in income tax return Ex.P3. It is submitted that only the income from the business ought to be taken into consideration and agricultural income, ought to be deducted, which is to the extent of Rs.36,000/-. While making the aforesaid submissions, it is stated that the earnings of the deceased, as taken by learned Tribunal, needs to be scaled down. Likewise, qua the conventional heads, he submits that the extent of compensation ought to be reduced.

On the contrary, learned counsel for the appellants-claimants has vehemently submitted that the earnings of the deceased, as depicted in income tax return Ex.P3, ought to be considered in toto. Rather, upon the same, there had to be addition, on the count of 'future prospects'. Taking it to be so, it is submitted that the compensation, which has been worked upon by learned Tribunal is on lower side, which calls for extensive enhancement.

So far as age of the deceased is concerned, it is pertinent to mention that income tax returns filed by the deceased himself, prior to his death, reveals about the date of birth as 19.09.1963. The date of accident is 22.09.2013. Thus, on the date of accident, Vijay Malik was 50 years and 3 days old. No doubt, as submitted that the deceased was above 50 years of age, but he was only 3 days above. Therefore, for all intents and purposes, the age of deceased has to be considered as 50 years only. As per ***Sarla Verma's case (supra)***, while giving bifurcation of the age groups, it has been specifically mentioned that for the age group of 46-50 years, the suitable multiplier is '13'. Considering the same, on the aspect of age of the deceased and application of multiplier, the findings recorded by learned Tribunal are appropriate.

But anyhow, the compensation, so worked upon, as observed aforesaid, calls for re-computation, as per settled law. The income tax returns for the assessment years 2010-11, 2011-12 and 2012-13 have been proved as Ex.P1 to Ex.P3. No doubt, income tax returns, are reliable evidence to determine the income of the deceased, more particularly, when there is no evidence to the contrary, led to show about the return giving the inflated earnings of the deceased. In view of the submissions made, the question, which now arises before this Court is, as to whether, the entire amount, as depicted in Ex.P3 is to be taken into consideration. Ex.P3 is the last return filed by the deceased himself, soon, before his death, which relates to assessment year 2012-13. This, of course, as such, can be taken into consideration to make assessment of the earnings of the deceased. But however, it also contains the recital of the agricultural income to the extent of Rs.36,000/-.

In the light of the same, the question which arises is, as to whether the entire agricultural income is to be taken into consideration or deducted, from the extent of earnings, as depicted in the income tax returns. In this regard, reference is made to ***K.Ramya and others vs. National Insurance Company Ltd. and another, 2022(4) RCR (Civil) 435***, wherein, it was observed by the Hon'ble Supreme Court, as herein given:-

> *21. Now, the sole issue which remains before this court is whether the entire amount under 'Income from House Property and Agricultural Land' should be deducted or not. In this respect, we are guided by the observations of this court in State of Haryana v Jasbir Kaur [16] wherein it was noted that -*
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> *8. xxxx*
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> *The land possessed by the deceased still remains with his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered.*
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> *(Emphasis Applied)*
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> *In our opinion, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.*
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> ***State of Haryana v Jasbir Kaur (2003) 7 SCC 484***

In the light of the aforesaid dictum, it is the managerial skills required to supervise the land, which ought to be considered. As held by the Hon'ble Supreme Court, in aforesaid case, as a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the rental income (rental/agricultural income). But anyhow, in the case of agricultural land, this Court deems it appropriate to take it as 20%.

In case of agricultural income of Rs.36,000/-, in modest estimate, the profit made, at the maximum, is taken to be 20%, which is Rs.7,200/-. Thus, working upon the compensation, out of Rs.2,03,000/-, amount of Rs.36,000/- is deducted at first instance and the residue comes to be Rs.1,67,000/-. 20% of Rs.36,000/- on the count of 'managerial skills' of the deceased, comes to be Rs.7,200/-. Therefore, in total, the loss of dependency comes to be Rs.1,67,000+7200=Rs.1,74,200/-.

In consonance with the guidelines laid down in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition on the count of 'future prospects' also is to be made. Considering the age of the deceased, addition of '10%' has to be made on this count, which comes to be Rs.17,420/-. Thus, the total earnings are taken to be Rs.174200+17420(10%)=Rs.1,91,620/- per annum. Out of the same, keeping in view the number of dependents, 1/4th is to be deducted on account of 'personal expenses', which is to the extent of Rs.47,905/- and the residue amount works out to be **Rs.1,43,715/-**.

As already observed aforesaid, the appropriate multiplier to be applied is '13'and after, applying this multiplier, the loss of dependency comes to be Rs.143715x13=**Rs.18,68,295/-**.

Besides the same, as per prevalent settled law, 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 held entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	**Rs.18,68,295/-**
Loss of consortium	:	**Rs.1,93,600/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.20,98,195/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.20,98,195-20,91,750=Rs.6,445/-**. On the enhanced amount of the compensation i.e. **Rs.6,445/-**, 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-Neelam is held entitled to **Rs.1,945/-** and appellants-claimants No.2 to 4 are held entitled to **Rs.1,500/-** each. The residue terms of the Award, as ordered by learned

Tribunal, shall remain the same.

In view of the aforesaid terms, **FAO-971-2015** filed by the insurance company, stands dismissed, whereas, **FAO-2959-2015** filed by the appellants-claimants, stands allowed.

December 21, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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