2023:PHHC:110570

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8413-2015 (O&M) and
XOBJC-32-CII-2016
Date of Decision: August 23, 2023

Cholamandalam MS General Insurance Co. Ltd.

...Appellant

VERSUS

Meena Sharma and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajneesh Malhotra, Advocate
for the appellant.

Mr.Ashwani Arora and Mr.Vipul Sharma, Advocate
for respondents No.1 to 3/cross-objectors.

None for respondent No.4

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ARCHANA PURI, J.

The present appeal has been filed by the Insurance Company, thereby, assailing the Award dated 26.08.2015, vide which, compensation was granted to the respondents/cross-objectors, on account of death of Subhash Chander Sama, in a motor vehicular accident.

On appraisal of the evidence brought on record, learned Tribunal concluded about accident, which took place on 16.08.2014, to have been caused by respondent No.1-Dinesh Kumar Sharma @ Dinesh Kumar, while driving Maruti car bearing registration No.HP-39-5111, in a rash and negligent manner, as a result whereof, Subhash Chander Sama, had sustained fatal injuries.

The Insurance Company disputes the fact of accident having taken place, as asserted by the claimants and further, also challenged the Award, on the quantum of compensation, so awarded by learned Tribunal.

After filing of the appeal, cross-objections were filed, at the instance of the respondents-claimants, thereby, seeking enhancement of the compensation and also grant of compensation, qua son of the deceased namely, Vikram Sama-respondent/claimant No.2, to whom, compensation was declined by learned Tribunal.

So far as fact of accident and involvement of the car bearing registration No.HP-39-5111, driven by Dinesh Kumar Sharma @ Dinesh Kumar is concerned, suffice to consider the evidence, as such, brought on record. Rajesh Kumar, an eye witness, has stepped into witness box as PW-3 and in his affidavit Ex.PW3/A, he has categorically deposed about the manner of taking place of the accident, on account of rash and negligent driving of car bearing registration No.HP-39-5111, driven by respondent No.1-Dinesh Kumar Sharma @ Dinesh Kumar. Further, he has also deposed about having got lodged FIR, copy whereof is **Ex.P1**. Vikram Sama, one of the claimants, who is son of the deceased has also stepped into witness box as PW-2 and he also deposed about the fact of death of Subhash Chander Sama, in a motor vehicular accident, caused on account of rash and negligent driving of car bearing registration No.HP-39-5111 by Dinesh Kumar Sharma @ Dinesh Kumar. Besides the same, copy of death certificate of Subhash Chander Sama has been proved as **Ex.P2** and post-mortem report is **Ex.P3**.

In fact, Dinesh Kumar Sharma @ Dinesh Kumar, who was the best person to substantiate the plea of denial of the accident, in the manner as caused, has chosen to remain away from the witness box. In view of Dinesh Kumar Sharma @ Dinesh Kumar having remained away from the witness box, more specifically, in view of the recitals of the FIR, coupled with the testimony of eye witness Rajesh Kumar, the fact of accident, on account of rashness and negligence, on the part of respondent No.1, while driving the car bearing registration No.HP-39-5111, which caused fatal injuries to Subhash Chander Sama, as such, stands amply established.

Proceeding further, even it has been assiduously submitted that the quantum of compensation has been worked upon, on higher side.

As per the version of the claimants, deceased Subhash Chander Sama was employed as Chief Engineer with M/s Galleon Shipping Ltd. (Merchant Navy) and was earning Rs.1,80,000/- per month. To so substantiate the avocation, followed by the deceased, the claimants have examined Vishesh Kapoor as PW-1, who, on the basis of the record, deposed about deceased Subhash Chander Sama to be working as Chief Engineer in their company and further also proved the contract of employment of year 2014 Ex.PW1/2 and deposed about his salary to be Rs.1,80,000/- per month. Copies of other service contracts are Ex.PW1/3 to Ex.PW1/8. Thus, the avocation, so followed by the deceased, stands established.

On the basis of the material coming forth, learned Tribunal had taken the salary of the deceased as Rs.1,80,000/- per month and worked upon the annual salary to be Rs.21,60,000/-. On the count of Income Tax and surcharge, deduction was made to the extent of Rs.4,92,304/-. Besides the same, considering the number of dependents, the deduction was further made from the residue income, to the extent of 1/3rd. While doing so, the compensation, so worked upon, in tabular manner, as herein given:-

Annual income of the deceased Subhash Chander Sama	Rs.1,80,000x12=21,60,000
Deduction of income tax as per slab for assessment year 2014-15	Rs.4,92,304-00
Dependent family members of the deceased were two in number, thus the deduction of 1/3rd of personal expenses	Rs.5,55,900-00
Net annual income of deceased	Rs.21,60,000-Rs.4,92,304-Rs.5,55,900= Rs.11,11,760-00

However, as per the prevalent scenario, the compensation so granted, calls for re-computation, as the income component has been wrongly considered as Rs.1,80,000/- for all months of the year.

The contract of employment Ex.PW1/2 clearly reveals about the company having entered into contract of employment with the deceased for the lumpsum amount of Rs.1,80,000/- per month or pro-rate as fees, only for the effective duration. The period of tenure, onboard of the vessel was six months. Not only this, further service contracts, which have also been proved, establish about the period of contract, to be only for a period of 2-3 months. Considering the same, the earnings of the deceased, as such, for 12 months of a year, cannot be taken to be Rs.1,80,000/-. Definitely, as observed in ***Ramesh vs. Karan Singh and another, 2022 ACJ 2658***, it cannot be expected that the person, who is working on such sea job, would do nothing for the rest of months of the year, after the contract period of his service is over. In these circumstances, it is expected that he shall be doing something or the other to earn money.

PW-1/15 is the confidential report of the amount of salary cheques, issued to Chief Engineer Subhash Chander Sama from January 2014 to August 2014, by the employer company i.e. M/s Galleon Shipping Ltd. It reveals about the different cheques to have been issued for the major portion of the year 2014, to the extent of various amounts and few of the entries, in the same are also less than Rs.1 lakh. In the given circumstances, some guess work has to be applied for considering the earnings of the deceased. For the period of contract, it may be @ Rs.1,80,000/-, but however, no such material is coming forth, about the money coming into the hands of the deceased for the residue months of the year. Considering the same, in modest estimate, the earnings of the deceased, as such, are taken to be **Rs.1,20,000/-** per month.

In the light of the aforesaid conclusion, the compensation so granted calls for re-computation. Except the deduction, on account of Income Tax, no further deduction has to be made from the said earnings. The income of the deceased is the salary minus the tax component. In the case in hand, as observed aforesaid, the earnings of the deceased has been assessed as Rs.1,20,000/- per month. In the year 2014-2015, the annual income, while taking the earnings as Rs.1,20,000/- per month, comes to be Rs.14,40,000/-. In view of the tax provisions, existing at the prevalent time, upto Rs.2,50,000/- there was no tax and from slab of 2.5 lakh to 5 lakh, it was to the extent of 10%, which works out to be Rs.25,000/-, in the present case. From slab of 5 lakh to 10 lakh, income tax was to the extent of 20%, which works out to be Rs.1 lakh and above Rs.10 lakh to Rs.14,40,000/-, it was 30%, which comes to be Rs.1,32,000/-. As such, the total tax payable is Rs.2,57,000/- and Cess @ 3% is Rs.7710/-. Thus, the total deduction, on the count of Income Tax is **Rs.2,64,710/-**. Thus, the annual income, after deduction of income tax, comes to be **Rs.11,75,290/-**. From this amount, 1/3rd is to be deducted, on the count of personal expenses of the deceased, which comes to be **Rs.11,75,290-3,91,763= Rs.7,83,527/-**. Considering the age of the deceased Subhash Chander, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier to be applied is '5' and by applying the same, the loss of dependency comes to be **Rs.7,83,527x5**=**Rs.39,17,635/-**.

Besides the same, the claimants are entitled to compensation, under conventional heads, which, as provided by learned Tribunal, needs to be re-appraised, as per the prevalent law.

At this juncture, it is important to consider that learned Tribunal had not granted compensation to the son of the deceased namely Vikram Sama, who was 37 years old, at the relevant time. However, in this regard, suffice to make reference to decision rendered in ***National Insurance Company Limited v. Birender (2020) 11 SCC 356***, wherein, major married and earning sons of the deceased mother, were granted compensation, on account of dependency of the children, upon their mother. It is quite obvious that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service.

Thus, dependency is a relevant criteria to claim compensation for loss of dependency. It does not mean financial dependency only.

Dependency may include gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. However, no doubt, as observed by learned Tribunal, the son of the deceased, who is one of the claimant, was 37 years, at the relevant time, but still, fact remains that the deceased was his father and emotionally, he is bound to be dependent upon his parents, in the background of the Indian society. Thus, keeping in view the same, the son of the deceased namely, Vikram Sama is also entitled to some amount, though, it may be on lesser side, as compared to his mother and sister.

Now, reverting to the conventional heads. On the count of ‘loss of consortium’, learned Tribunal had paid an amount of Rs.50,000/-, only to the widow. In this regard, reference is made to decision rendered in ***Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327***, wherein, the Hon’ble Supreme Court, while replying upon ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** , 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 the given circumstances, the children of the deceased, are also entitled to compensation, on the count of ‘loss of consortium’ individually. In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, 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, the 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.39,17,635/-, loss of consortium comes to be Rs.1,32,000/- (Rs.44,000/- to each of the claimant), Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.40,82,635**/-.

In the light of aforesaid work upon, the compensation, so awarded by learned Tribunal, is scaled down from Rs.55,58,000/- to Rs.40,82,635/-. Out of the said amount, so worked upon, in the light of the aforesaid observations, besides the widow and daughter, the son of the deceased namely, Vikram Sama-respondent-claimant No.2, is held entitled to some amount of compensation. Looking at the various circumstances spelt out, more particularly, considering the age of the son, at the relevant time, he is granted a lumpsum compensation of Rs.62,635/-, out of the compensation, as now awarded. The residue amount of compensation be disbursed to the claimants No.1 and 3, as per the terms of the impugned Award. The interest component shall remain the same as granted by learned Tribunal.

During the pendency of the appeal, payment of compensation, beyond Rs.25,00,000/- had remained stayed. In the light of the same, the outstanding amount be paid by the Insurance Company, within a period of eight weeks from today onwards.

In view of the above-said terms, the appeal filed by the insurance company i.e. FAO-8413-2015 stands accepted, with partial modification, on account of part acceptance of the cross-objections filed by the claimants i.e. XOBJC-32-CII-2016.

August 23, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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