2024:PHHC:163039

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-5367-2004 (O&M)
DECIDED ON: 14.11.2024

MANJU SHARMA AND ORS. . . . APPELLANT(S)

VERSUS

JATINDER SINGH AND ORS. . . . RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Sandeep Bansal Advocate
for the appellants.

Mr. Vinod Gupta, ADvocate
for respondent No.4 – Insurance Company.

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SANJAY VASHISTH, J (ORAL)

On the very outset, counsel for the applicants-appellants submits that inadvertently, in the headnote of the application i.e. CM-7917-CII-2024, name of the deceased – Manju Sharma (appellant No.1), has been mentioned as Pritam Singh.

Further points out that in the pleadings of the application as well as in the prayer clause, the correct name of the deceased has been mentioned as ‘Manju Sharma’. Therefore, he prays for necessary corrections/amendments in the application.

Allowed as prayed for.

Office is directed to carry out necessary corrections in the head note of the application.

CM-7917-CII-2024

i. This is an application under Order 22 Rule 3 CPC read with Section 151 CPC, for impleading/bringing on record the legal representative of deceased/appellant No.1 – Manju Sharma w/o late Sh. Dev Dutt Sharma.

ii. It has been averred in the application that during the pendency of present appeal, appellant No.1 – Manju Sharma, had died on 28.07.2017, leaving behind her legal representatives (son and daughter) as mentioned in para No.2 of the application. It has further been averred that apart from those, there is no other legal representative of deceased – Manju Sharma. The application is accompanied by an affidavit-dated 23.04.2024 of Deepak Sharma, who is son of the deceased/appellant No.1 – Manju Sharma.

iii. Notice of this application.

iv. Mr. Vinod Gupta, Advocate, counsel for respondent No.4 – Insurance Company, who is present in Court, accepts notice in the application and pleads no objection to the prayer made therein.

v. After hearing learned counsel for the parties and perusing the application, which is supported by an affidavit, same is allowed, subject to all just exceptions and the applicants as mentioned in para No.2 of the application are ordered to be impleaded as legal representatives of deceased/appellant No.1 – Manju Sharma. It is, however, clarified that this order shall not confer any title upon the legal representatives to the estate of the deceased - appellant and this order has been passed only to allow the aforesaid legal representatives to pursue this appeal.

Amended memo of parties filed along with the application is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

vi. CM stands disposed of.

<u>FAO-5367-2004</u>

1. Present appeal has been filed by the appellants/ claimants (hereinafter referred as 'claimants') in MACT Case No. 145-A of 30.05.01/2,06.03, for modification of award dated 14.08.2004 ,passed by Ld. Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter referred to as 'Ld. Tribunal') by seeking enhancement of amount of compensation, on account of death of deceased –'Dr. Dev Datt Sharma'.

2. Briefly stated facts of the case are that on 18.03.2001, at about 10:30 P.M., Sh. Dev Datt Shrama (deceased) was proceeding from Hoshiarpur to Panchhta, on his Maruti Car bearing registration no. PB-08-2115, claimants Manju Sharma, Deepak Sharma and Meena Sharma were following the said car in Maruti Zen No. PB.07-J-4858. When car of deceased reached near Theka of Jagitpur, a truck bearing no.HR-29-GA-1555 loaded with wood had been wrongly parked on the road by respondent no.1.Due to wrong parking of the said truck, the car of Dev Dutt Sharma (deceased) struck with back side of the truck and as a resultant impact, Dev Dutt Sharma received multiple grievous injuries and was transported to Civil Hospital, Phagwara where he ultimately succumbed to his injuries.

Resultantly, FIR NO.30 dated 19.03.2001 under section 304-A/427 IPC was registered at police Station, Phagwara.

3. Appellants-Manju Sharm (widow of the deceased) , Deepak Sharma (son of the deceased) and Meena Sharma (daughter of the deceased), filed claim petition under Section 166 of the motor vehicle Act, 1988 for seeking compensation on account of death of Dev Datt Sharma in the motor vehicular accident.

After going through the record and appreciating the evidences, Learned Tribunal while deciding issue no.1 observed that accident in question had occurred due to rash and negligent act of respondent No.1 – Jatinder Singh (driver of truck), and accordingly, awarded monetary compensation to the claimants to the tune of Rs.6,58,000 /- payable by respondents jointly and severally with interest @9% per annum from the date of filing of the petition till its realization.

4. Appellants/ Claimants have filed the present appeal, seeking enhancement of the compensation over and above the amount awarded by the Ld. Tribunal.

Counsel for the appellants submits that it is well established on record that deceased was posted as SMO, PHC, Panchkula and was drawing Rs.28,620/-per month as carry home salary. Ld. Tribunal has erred by deducting about ½ of the total earnings towards personal expenses, and assessing Rs.1,80,000/-only towards annual dependency of the claimants on the deceased.

Further submits that Tribunal has erred in law and facts while awarding compensation only on balance years of service (For 3 years 7 months). After retirement, the deceased would have worked for minimum 15 years and would have earned much more in private practice than he was earning in job at the time of his death, however, tribunal has awarded only

Rs.2,00,000/- on that account. The deceased was also in the prime of his career and was doing well and would have earned much more in coming years. Thus, Ld. Tribunal failed to take the same into consideration and then to calculate the compensation amount.

5. On the other hand, Ld. Counsel for Respondent No.3 – Insurance Company, submits that the Ld. Tribunal has rightly awarded the amount of compensation and there is no need to interfere in the award passed by the Ld. Tribunal. Thus, prayed for dismissal of appeal.

6. I have gone through the impugned award and the calculations mentioned therein, apart from hearing learned counsel for the parties. There is no doubt that in a situation where the different Courts at different times were at diversions in their opinion and when there was no clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench, and accordingly, Constitution Bench was constituted in ***National Insurance Company Limited v. Pranay Sethi and Others, 2017 (4) RCR (Civil) 1009 : Law finder Doc ID #918174***. Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in Pranay Sethi's case (supra), would help the Courts.

7. It is not in dispute that deceased –Dev Datt Sharma was serving as S.M.O. Incharge and drawing Rs.28,620/-per month as carry home salary . From the evidence on record, it stands established that the deceased was aged about 53 years and as per Pranay Sethi's case (supra), addition of 15%, on the count of 'future prospects' has to be made and total amount of

earnings comes to be Rs.28,620/- + Rs.4,293/- (15% of Rs.28,620) = Rs.32,913 /- per month.

Out of the same, keeping in view the number of dependents i.e. widow, and two children 1/3rd is to be deducted on account of 'personal expenses', which is to the extent of Rs.10,971 /- and the residue amount works out to be Rs. Rs. 21,942/- per month and the annual income comes to be Rs.2,63,304/-. Considering the age of the deceased as per ***Smt. Sarla Verma & Ors.*** ***v.*** ***Delhi Transport Corporation & Anr., (2009) 6 SCC 121***, the appropriate multiplier to be applied in the present case is '11' and after, so applying this multiplier, the loss of dependency comes to be Rs.2,63,304/- X 11 = Rs.28,96,344 /-.

8. Rest of the parameters are assessed and calculated in accordance with the judgment of this Court titled as ***Sangtari Muleem v. Karnail Singh, (FAO No. 2538 of 2006, D/d. 07.07.2023) : Law Finder Doc Id # 2270482***, which is in consonance with the settled proposition of law laid down by the Apex Court in ***Pranay Sethi's case (supra)***, and ***Smt. Sarla Verma's case (supra)*** and ***Smt. Anjali and others v. Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 229 : Law Finder Doc Id #2081014***.

Claimants are entitled for Rs. 25,000/- as compensation under the head of funeral expenses and Rs.20,000/- towards loss of estate. Loss of consortium is to be awarded to the tune of Rs.48,400/- each, to all the claimants in the instant appeal.

9. For the sake of convenience, amount of compensation assessed and calculated by this Court is produced below in a tabular form:

Sr. No.	*Head(s)*	*Compensation awarded by the High Court*
1.	*Income*	*Rs.28,620/-*

2.	*Future Prospects*	*15%*
3.	*Deduction towards personal expenses*	*1/3rd*
4.	*Total Annual Income*	*Rs.2,63,304/-*
5.	*Multiplier*	*11*
6.	*Loss of Dependency*	*Rs.28,96,344 /-*
7.	*Funeral Expenses*	*Rs.25,000/-*
8.	*Loss of Estate*	*Rs.20,000/-*
9.	*Loss of Spousal Consortium*	*Rs. 48,400 /-*
10.	*Loss of Parental Consortium*	*Rs.96,800 /- (Rs. 48,400 X 2)*
11.	*Loss of filial Consortium*	*Nil*
12.	*Total Compensation to be Paid*	*Rs.30,86,544/-* *(R/o Rs.30,86,500/-)*

10. Thus, keeping in view the aims and object of the beneficial legislation of providing relief to the victims and their families, the total compensation amount payable to the appellants/claimants is enhanced to **Rs.30,86,500/- (Rupees Thirty Lacs Eighty-Six Thousand and Five Hundred only).**

11. The awarded compensation shall be paid to the claimants within a period of three months from the date of this order, along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants/claimants, with the same terms, which have been mentioned by Ld. Tribunal.

It is further clarified that in case compensation amount is not paid within aforementioned stipulated period, same shall be payable to the claimants along with interest @ 9% per annum.

And, in case any further delay is caused beyond six months from today, compensation amount would be payable to the claimants/appellants along with interest @12% per annum from the date of filing claim application till its realization.

12. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

Misc. application(s), if any, also stand(s) disposed of.

(SANJAY VASHISTH)
JUDGE

November 14, 2024
J.Ram

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