IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-1535-2007 (O&M)

Vijay Kumar

...Appellant

VERSUS

Sham Singh and others

...Respondents

(ii) FAO-1536-2007 (O&M)

Shivani and another

...Appellants

VERSUS

Sham Singh and others

...Respondents

(iii) FAO-1537-2007 (O&M)

Bimla Rani

...Appellant

VERSUS

Sham Singh and others

...Respondents

Date of Decision: February 21, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashish Gupta, Advocate
for the appellants.

Mr.Vipul Sharma, Advocate for
Mr.Neeraj Khanna, Advocate
for respondent No.3.

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ARCHANA PURI, J.

These are three appeals, filed for seeking enhancement of the compensation, awarded by learned Motor Accident Claims Tribunal, in three different Awards of the even date, arising from the same accident.

FAO-1536-2007 relates to the compensation, granted by learned Tribunal, on account of death of Rajesh Kumar.

FAO-1537-2007 relates to the compensation granted by learned Tribunal, on account of death of Naresh Kumar.

FAO-1535-2007 relates to the compensation, awarded by learned Tribunal, on account of injuries sustained by the Vijay Kumar, in the accident in question.

After hearing learned counsel for the parties, learned Tribunal had held the accident to have taken place, on account of rash and negligent driving of truck bearing registration No.HP-11-2005, driven by respondent No.2-Manga Ram and the compensation was granted to the claimants, to the extent of Rs.6,13,000/-, on account of death of Rajesh Kumar, Rs.4,40,000/-, on account of death of Naresh Kumar and Rs.39,600/-, to claimant Vijay Kumar, on account of injuries sustained by him, in the accident, which took place on 18.02.2004.

So far as, the factum and manner of accident and liability, so saddled upon the owner, driver and insurer of the offending truck is concerned, be it noted that none of the respondents, so made liable, have filed any appeal and as such, this aspect, calls for no further judicial scrutiny. Only the appeals have been filed by the claimants, for seeking enhancement of the compensation.

Let us consider the claim, vis-a-vis, death of Rajesh Kumar. It is the categoric claim of the appellants-claimants that deceased Rajesh

Kumar was 28 years old, at the time of accident. He was indulging into wholesale business of Ayurvedic medicines and his earnings were Rs.30,000/- per month. To so substantiate his earnings, widow of deceased namely, Shivani had stepped into witness box as PW-2 and her sworn testimony, in the form of affidavit, is Ex.PW2/A, who deposed about the age as well as indulgence of deceased Rajesh Kumar, in wholesale business of Ayurvedic medicines. She had also categorically deposed about his earnings to be Rs.30,000/- per month. Furthermore, PW-3 Deepak Sharma, who was practicing as an Advocate in Income Tax and Sales Tax, deposed about himself being engaged as a counsel by the deceased and he had filed various returns. He also proved income tax returns, which are for the year 1999-2000 Ex.P2, 2000-2001 Ex.P2, 2002-2003 Ex.P3 and 2003-2004 Ex.P4.

From the income tax returns, it is evident that the date of birth of the deceased was 01.11.1975. As such, he was in the age group of 28-29 years. As observed in the Award, the last income tax return was being considered for making assessment of the compensation, but however, the income tax return, which had been taken into consideration, is Ex.P3, which relates to assessment year 2002-2003, which states the earnings of the deceased as Rs.60,000/- per annum. However, it should be noted that this was not the last income tax return filed by the deceased himself. In fact, it is Ex.P4, which was for the year 2002-2003 and assessment year of which was 2003-2004 and the same was filed by the deceased himself. This income tax return also bears the seal of the department, which states about the date of receipt to be 29.09.2003. This was filed soon before the death of the deceased and as such, the same ought to be taken into consideration. As per

Ex.P4, the income of the deceased from the business/profession was Rs.66,000/-. For the purposes of assessment of the compensation, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, it is the income minus tax component, which ought to be taken into consideration. As per Ex.P4, at the relevant time, on the income of Rs.66,000/-, the income tax payable was Rs.2200/-. After deducting the same, the annual income comes to be Rs.63,800/-. However, on the count of 'future prospects', keeping in view the age of the deceased, addition of 40% ought to be made, which is to the extent of Rs.25,520/-. Thus, the total income of the deceased works out to be Rs.89,320/- per annum.

As per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction to the extent of 1/3rd has to be made, on the count of 'personal expenses'. Thus, making this deduction of 1/3rd, the loss of dependency comes to be Rs.89320-29773=Rs.59,547/-.

Also, it is pertinent to mention that multiplier applied for working upon the compensation, taken by learned Tribunal, is '15', which is erroneous. However, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, keeping in view the age of the deceased, to be applied is '**17**' and by applying the same, the loss of dependency, works out to be Rs.59547x17=**Rs.10,12,299/-**.

Besides the same, 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)***. However, 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 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 appellant-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 Rajesh Kumar, is re-computated, as herein given:-

Loss of dependency	:	**Rs.10,12,299/-**
Loss of consortium	:	**Rs.1,45,200/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.11,93,799/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,93,799-6,13,000=Rs.5,80,799/-**. On the enhanced amount of **Rs.5,80,799/-**, 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 amount, a sum of Rs.3 lakh is granted to appellant-claimant No.1-Shivani, a sum of **Rs.2 lakh** is granted to appellant-claimant No.2-Sahil and the residue amount of Rs.80,799/-, is granted to claimant-proforma respondent No.5-Nirmala Devi.

The residue terms of the Award shall remain the same.

Now, let us consider the claim qua death of Naresh Kumar. It is the categoric claim of the appellants-claimants, who are parents of deceased that Naresh Kumar was 26 years old. He was doing service in ISS Company, Norway and used to earn Rs.1 lakh per month. Rajinder Pal, father of the deceased, stepped into witness box as PW-1 and in his affidavit Ex.PW1/A, he categorically deposed to this effect. He also stated that in Norway currency, Rs.1 lakh is equivalent to 20000 Crona. Besides the aforesaid witness, even, Vijay Kumar, cousin of the deceased, who was accompanying him, at the relevant time, deposed about himself to be working in DHL Company, Norway, whereas, Naresh Kumar was working in ISS Company, Norway and also deposed about the deceased to be earning Rs.105.89 N.O.K. per hour and working for 7-8 hours per day and used to earn about 840 Crona per day. His salary certificate issued by ISS Company is Ex.P2. The passport of the deceased has been proved as Ex.P1.

Learned Tribunal had appropriately made observation that there is no serious challenge to the certificate on record, in the statement of Vijay Kmar, who was also working in Norway and is one of the injured of the accident in question. As per the calculation so made, the monthly emoluments of the deceased, worked out to be less than 20000 Crona. In the given circumstances, learned Tribunal appropriately concluded about the salary certificate to be not the procured one to show exaggerated earnings. Furthermore, learned Tribunal rightly concluded that tax schedule as prevalent in Norway, at the relevant time, is not evident and there is no evidence, brought on record, about the carry home salary, coming into the hands of the deceased, after meeting the liability, towards payment of tax. Moreover, what was the cost of living, prevalent at that time in Norway, no evidence, as such, has come on record. Also, considering the fact of deceased getting married in near future, learned Tribunal had appropriately considered the monthly dependency of the appellants-claimants, who are parents, as Rs.3000/- and annual dependency, as such, has been worked upon as Rs.36,000/-, which calls for no further deduction, on the count of 'personal expenses', keeping in view the extent of earnings, being spelt out. However, by applying the multiplier of '12', in view of the age of the parents of the deceased, the compensation has been worked upon as Rs.4,32,000/-. Besides the same, another amount of Rs.8000/- has been given towards funeral expenses and the total compensation has been worked upon as Rs.4,40,000/-.

However, the extent of compensation, so worked upon, calls for re-determination, as per prevalent settled law. It should be noted that even, amount has to be granted, on the count of 'future prospects', considering the age of the deceased. In the present case, addition ought to be made to the extent of 40%, on this count to the monthly salary of Rs.3000/-, as observed aforesaid. Thus, the monthly dependency is taken as Rs.4,200/-, annual whereof, comes to be Rs.50,400/-. As per ***Pranay Sethi's case (supra)***, the appropriate multiplier is to be applied, while taking into consideration the age of the deceased. However, learned Tribunal had considered the age of the parents of the deceased and has applied multiplier of '12', which ought to be applied, while considering the age of the deceased and therefore, suitable multiplier would be '17', as per ***Sarla Verma's case (supra)*** and by applying the same, the loss of dependency, works out to be Rs.50400x17=**Rs.8,56,800/-**.

Besides the same, 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)***. However, 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 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 appellant-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 Naresh Kumar, is re-computated, as herein given:-

Loss of dependency	:	**Rs.8,56,800/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.9,89,900/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.9,89,900-**

4,40,000=Rs.5,49,900/-. On the enhanced amount of **Rs.5,49,900/-**, 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. The enhanced amount of compensation be apportioned amongst appellant-claimant and proforma-respondent No.4, in equal shares. The residue terms of the Award shall remain the same.

Now, coming to the claim sought by Vijay Kumar, who sustained injuries in the accident in question. In the claim petition, it is asserted by the appellant-claimant Vijay Kumar that he is 26 years old and was doing service in Norway in DHL Company (which is also know as DANZA), and his monthly earnings were Rs.1 lakh, according to Indian currency, whereas approximately 20000 Crona in Norway currency. It is categoric claim that he had sustained multiple injuries on his head, face and other parts of the body and his left arm was fractured and iron rod was inserted in the operation. He also deposed about having sustained injuries on his right arm and shoulder and operated upon. Vijay Kumar, in his affidavit Ex.PW1/A, has deposed in consonance with the pleaded case. He also deposed about having become permanently disabled and both his arms are not working and further, that his future became dark and he is unable to do heavy work. He also tendered into evidence his salary certificate Ex.P1, disability certificate Ex.P2, copy of passport Ex.P3 and medical treatment record Ex.P4.

Undisputedly, Vijay Kumar has not examined any doctor, who treated him, in respect of the injuries sustained in the accident in question and also, never examined the doctor, who issued the disability certificate.

The disability certificate, coming on record is Ex.P2. As per the medical treatment record Ex.P4, the claimant was admitted in Government Medical College and Hospital, Sector-32, Chandigarh, on 19.02.2004 and was discharged on 22.02.2004, which shows that he remained under treatment for a period of four days. As per the history given by the doctor in Ex.P4, the patient was having pain in neck, right arm and left forearm. The diagnosis made by the doctor was '#BB forearm (L)-ORIF with CC-DCP 7 hole AO'. Besides the same, the bills of the treatment, coming on record are Ex.P4 to Ex.P11, total whereof is Rs.22,604/-, which has been rounded off as Rs.22,600/- by learned Tribunal. The disability certificate which is coming on record is Ex.P2 and perusal of the same reveals that it was case of '#BB Lt. Operated & united with scarring of left forearm & Rt. Arm. Disability at present is 7% (seven). Also, it was observed in the disability certificate that this disability was non-progressive and likely to improve.

In the given circumstances, learned Tribunal had granted Rs.7,000/- towards the disability and another Rs.5000/- was granted towares amenities of life. Besides the same, on the count of 'pain and suffering', the amount awarded was Rs.3000/-. Besides the same also, while giving detailed manner of vocation, so followed by the appellant-claimant in Norway, towards the loss of earnings, an amount of Rs.2000/- has been granted. Thus, total compensation granted is Rs.39,600/-.

However, it is now contended that on account of claimant having lost his job in Norway, loss of the extent of Rs.20 lakh was caused. However, this aspect has been very considered by learned Tribunal. It has been considered that there is evidence, brought on record, by the claimant, as to for how much leave, he had come to India, when he sustained injuries in the accident which took place 18.02.2004. Besides the same also, no detail, has come on record, with regard to kind of injuries, so suffered by him, which rendered him unable to do the same job, which was being done by him in Norway, prior to his visit to India. Even, it has been very well observed by learned Tribunal that the statement of the claimant is conspicuosly silent, with regard to the nature job, being done by him in the company at Norway, in order to satisfy the Court that due to the injuries sustained by him, which caused some disability, he had been rendered unable, either to go back to Norway or to do the job of the similar nature. It was also observed that there is nothing on record, to suggest that the claimant was a permanent employee in Norway and therefore, loss of earnings, as such, cannot be assessed, keeping in view the salary, which he received in Norway and also, if the claimant had not opted to go to Norway, after the accident, he cannot be heard to say that he is entitled to loss of wages, keeping in view the emoluments, received by him in Norway.

Considering all the aforesaid facts, the compensation of Rs.20 lakh, as asserted, has been rightly not granted by learned Tribunal. However, the fact remains that there was fracture of both bones suffered by claimant-Vijay Kumar, for which Open Reduction and Internal Fixation (ORIF) process was conducted. Definitely, on account of said injury, he must have been put to discomfort to a great extent and must have also passed through trauma. As such, on the count of 'pain and suffering', the amount of Rs.3000/- granted by learned Tribunal, calls for enhancement. Furthermore, even towards loss of earnings also, the amount of Rs.2000/-, so granted, calls for enhancement.

Considering the aforesaid aspects, this Court deems it approprate to grant **Rs.25,000/-**, over and above the compensation, so granted by learned Tribunal. On the enhanced amount of **Rs.25,000/-**, appellant-claimant Vijay Kumar, 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. The residue terms of the Award shall remain the same.

In view of the aforesaid terms, all the three appeals stand allowed.

February 21, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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