IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2110-2007 (O&M)
Date of Decision: March 04, 2024

Nirmal Goel and others

...Appellants

VERSUS

Makhan Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates for the appellants.

Mr.Rahul Pathania, Advocate for Mr.R.C.Kapoor, Advocate for respondent No.4-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 awarded by learned Tribunal, on account of death of Om Parkash Goel, in a motor vehicular accident, which took place on 01.07.2004.

On appraisal of the evidence, brought on record, learned Tribunal, while considering the deceased Om Parkash Goel as a practising Advocate and while relying upon the last income tax return filed by the deceased, which is Ex.PE, had concluded about the income from profession to be Rs.85,250/- per annum. After deducting an amount of Rs.3675/- as income tax and surcharge on income tax, the net income of the deceased, from the profession was taken as Rs.81,585/- per annum and 1/3rd was deducted, on the count of 'personal expenses' and loss of dependency was worked upon as Rs.54,400/- per annum. To the said amount, multiplier of '11' was applied and compensation was worked upon as Rs.5,98,400/-. Besides the same, another sum of Rs.5000/- was granted, on account of damage caused to the car as well as Rs.5000/- was granted, on account of expenditure incurred on transporation of dead body, last rites and 'kirya' of deceased. Another sum of Rs.5000/- was granted to the widow, on the count of 'loss of consortium'. Thus, the total compensation was worked upon as Rs.6,13,400/-.

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants have filed the present appeal for seeking enhancement.

Be it noted that, no appeal, as such, has been filed by any of the respondents, upon whom, the liability was fastened.

While making reference to the evidence, adduced before learned Tribunal, it has been submitted by learned counsel for the appellants that compensation has been worked upon miserably on a lower side, which calls for extensive enhancement on various counts, to which, amiss has been given by learned Tribunal. Learned counsel for the appellants, while making reference to the income tax return Ex.PE, which is for the assessment year 2003-2004, has assiduously submitted that income has been wrongly worked upon as Rs.85,250/- per annum. Rather, the income from the house property has not at all been considered. Also, it has been submitted that the income and expenditure detail, which was also furnished, copy whereof is Ex.PF, has not been taken into consideration. It is submitted that the amounts repaid, on account of car loan and house loan, as such, have not been taken into consideration. Thus, learned counsel for the appellants made a prayer for enhancement of the compensation.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellants and he submits that on the basis of the evidence adduced, learned Tribunal had appropriately considered the last income tax return filed by the deceased, during his lifetime and therefore, the compensation worked upon by learned Tribunal, is just and reasonable, which calls for no further enhancement. Hence, he made a prayer for dismissal of the appeal.

Before proceeding further, at the very outset, it is pertinent to reiterate the concept of 'just' compensation under Section 168 of the ibid Act. It is settled proposition, now through the catena of decisions, including the one, rendered by the Constitution Bench in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, that the compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact dependent exercise, which must be liberal and not parsimonious. Furthermore, the Motor Vehicle Act of 1988 is a beneficial and welfare legislation, that seeks to provide compensation, as per the contemporaneous position of an individual, which should, essentially be forward looking. It must be emphasized that compensation is a more comprehensive form of pecuniary relief, which involves broad-based approach, keeping in view the purpose of providing stability and continuity in peoples' life, in the future.

In view of the above-mentioned principle, let us now advert to the facts of the case in hand.

So far as, the fact of accident, manner of taking place of the same and the involvement of the car bearing registration No.CH-03F-7062, in the accident, as such, besides the truck bearing registration No.HR-55A-1068, are concerned, the same has since attained finality, as the findings, so recorded by learned Tribunal, had not been challenged by the respondents, who were fastened with the liability.

So far as, indulgence of the deceased in the profession of Advocate is concerned, the same is not disputed. In the claim petition, the deceased is asserted to be earning Rs.25,000/- per month. Relating to the same, besides Nirmal Goel, widow of the deceased, even, one Vijender, Advocate, had been examined as PW-4, who also deposed about the source of earning of Om Parkash Goel and the extent of his earnings. Most important are the income tax returns, which have been duly proved, during the course of evidence. Even, PW-2 Nirmal Goel deposed about her husband to be an income tax payee. Various income tax returns for years 1999 to 2003 filed by deceased Om Parkash Goel and also income and expenditure statements had been adduced in evidence, which are Ex.PE to Ex.PN.

To make assessment of the compensation, learned Tribunal, while taking into consideration, the date of birth of Om Parkash Goel, as mentioned in the income tax return, to be 15.10.1952, has appropriately considered the deceased to be 52 years old, at the time of accident. So far as, indulgence of the deceased in the profession of Advocate is concerned, the same is not disputed.

The documents, such as, income tax returns, are reliable evidence to determine the income of the deceased. In this regard, reliance is placed upon ***K.Ramya and others vs. National Insurance Company Ltd. and another, 2022(4) RCR (Civil) 435***, wherein, also reliance was placed upon ***'Amrit Bhanu Shali vs. National Insurance Co. Ltd. (2012) 11 SCC 738'***. In the light of the same, learned Tribunal had considered the last income tax return, furnished by the deceased, during his life time, which was for the assessment year 2003-2004 Ex.PE. The accident had taken place on 01.07.2004 and therefore, considering this to be the last income tax return, it was appropriately considered by learned Tribunal. However, the important component of the earnings of the deceased was given amiss. Learned Tribunal had considered the only income from the profession, which is Rs.85,250/- per annum. However, there is recital in the income tax return about the income from the house property to the extent of Rs.30,000/-. Even, PW-2 Nirmal Goel, had stated about income from the house property by the deceased, together with his brother.

However, the issue relating to the calculation of the income from the house property as well as agricultural land altogether, was considered by the Hon'ble Supreme Court in ***K. Ramya's case (supra)***. In this regard, the Hon'ble Apex Court had observed that they are guided by the observations made in the ***State of Haryana vs. Jasbir Kaur (2003) 7 SCC 484***, wherein, it was noted as herein given:-

> *8. x-x-x-x 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.*
>
> *(Emphasis Applied)*

While considering the same, it was also observed by the Hon'ble Supreme Court that even though, in their opinion, the abovementioned observations, though made in the context of agricultural land, but the same 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. Further therein, it was observed that 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.

Taking guidelines from the aforesaid case law, the income from house property, is not to be excluded in toto, as done by learned Tribunal, in the present case. In fact, it should be taken into consideration. The assessment of the loss, on account of death Om Parkash Goel has to be worked upon, while considering the value of his managerial skills. The income, on this count, is depicted in Ex.PE is Rs.30000/-. While taking into consideration the same and also keeping in view the fact of the deceased being an Advocate, who, as compared to the normal person, is in a better position, while knowing the legal implications, to rent out the properties, at better rates, the value of managerial skills, is appropriately taken as 1/3rd of the earnings so depicted i.e. Rs.10,000/-, while considering the earnings from this source, to be Rs.30,000/-. Thus, this amount also to be taken into consideration, while working upon the compensation.

The professional income is Rs.85,250/-. Though, during the course of the arguments, learned counsel for the appellants has assiduously submitted that there was car loan and house loan, availed by the deceased during this life time and the installment, so given, on account of loan, ought to be taken into consideration, while making the assessment of the income, but however, the aforesaid submission is bereft of merits. In this regard, firstly, it is pertinent to mention that no such clear and specific evidence has been brought on record, with regard to the availing of the loan facility by the deceased. The pleadings are silent on this count and even, widow of the deceased, while in the witness box, had also not deposed about the same. Even, in the income tax return, relating to the same, there is no mention made. Though, in the income and expenditure account statement, there is mention made of the car loan or of the certain banks, but, it does not, as such, co-relate to the loans availed by Om Parkash Goel. In the light of the same, in the absence of any material coming forth, the addition, on the basis of the loan installments, as such, cannot be made.

The income tax return filed by the deceased, during his life time, soon before his death, is the most appropriate one and therefore, the same has been rightly considered by learned Tribunal. Though, addition on the count of income from the house property ought to be made, as observed aforesaid.

Considering the aforesaid, the income taken on both the counts i.e. from profession as well as from house property, is worked upon as Rs.85250+10000=Rs.95,250/-. For the purposes of assessment of the compensation, as per ***Pranay Sethi's case (supra)***, it is the income minus tax component, which ought to be taken into consideration. As per the prevalent tax slab, the initial amount of Rs.50,000/- of the earnings was tax free. Further, tax was 10% from the extent of Rs.50000-60000/-, i.e. Rs.1000/-. From the bracket of Rs.60000-Rs.1,50,000/- (in the present case Rs.60000 to Rs.95250/-), it was 20%. Taking it to be so, the amount of tax works out to be Rs.1000+7050=Rs.8050/-. After deducting the same, the annual income comes to be Rs.87,200/-. However, on the count of 'future prospects', keeping in view the age of the deceased, addition of 10% ought to be made, which is to the extent of Rs.8720/-. Thus, the total income of the deceased works out to be Rs.95,920/- per annum.

Learned Tribunal had made deduction to the extent of 1/3rd, on the count of 'personal expenses', but however, considering the number of the dependents upon the deceased i.e. widow, two unmarried daughter and one son i.e. four dependents, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction, ought to be, to the extent of 1/4th. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.95920-23980=Rs.71,940/-.

Considering the age of the deceased, learned Tribunal had appropriately applied the multiplier of '11', which is in consonance with the ***Sarla Verma's case (supra)***. Thus, by applying the same, the loss of dependency, works out to be Rs.71940x11=**Rs.7,91,340/-**.

The compensation, on the count of damage to the car bearing registration No.CH-03F-7062, of which the deceased was occupant, was also sought. Learned Tribunal had granted compensation, on account of damage to the car, to the extent of Rs.5,000/-. Undisputedly, no evidence, as such, has been led by the claimants, with regard to the detail of the damage caused to the car, but however, from the manner of the accident, as spelt out from the evidence, it stands established that after striking of the offending truck, into the deceased and thereafter, the car, the said car fell into the ditches. Obviously, some amount of damage is bound to be caused, on account of this manner of taking place of the accident. The amount granted by learned Tribunal is on lower side, which further stands enhanced, on this count to the extent of Rs.30,000/-.

Besides the aforesaid, under the conventional heads, as per ***Pranay Sethi's case (supra)***, the compensation ought to be paid, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'. As per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required.

In view of the same, appellants-claimants are entitled to compensation, on the aforesaid counts. However, taking into consideration the enhancement as provided in ***Pranay Sethi's case (supra)***, to the extent of 10%, after every three years of passing of the judgment, the compensation payable, on the count of 'loss of consortium' is to the extent of **Rs.48,400/-**, to each of the claimants and on the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be

Rs.18,150/-, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Om Parkash Goel, is re-computated, as herein given:-

Loss of dependency	**:**	**Rs.7,91,340/-**
Damage to the car	**:**	**Rs.30,000/-**
Loss of consortium	**:**	**Rs.1,93,600/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.10,51,240/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.10,51,240-6,13,400=Rs.4,37,840/-**. On the enhanced amount of the compensation i.e. **Rs.4,37,840/-**, 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, shall be disbursed to the appellants-claimants in equal shares. However, any amount paid to any of the appellant-claimant earlier, shall be appropriately deducted from the enhanced amount, falling to his/her share. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid terms, the present appeal stands allowed.

March 04, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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