**2024:PHHC:019468**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**(i) FAO-3331-2022 (O&M)**

Siri Ram General Insurance Co. Ltd.

...Appellant

VERSUS

Smt.Sheela Devi and others

...Respondents

**(ii) Cross Objection-86-2023 (O&M)**

Siri Ram General Insurance Co. Ltd.

...Appellant

VERSUS

Smt.Sheela Devi and others

...Respondents/Cross objectors

**Date of Decision: February 12, 2024**

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Naman Jain, Advocate
for the appellant.

Mr.Mayank Yadav, Advocate
for the respondents-cross objectors.

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**ARCHANA PURI, J.**

FAO-3331-2022 has been filed by the insurance company to assail the Award dated 12.04.2022, whereby, compensation was granted, on account of death of Kartik Kumar Yadav, in a motor vehicular accident, which took place on 27.10.2020.

Even, Cross-objections No.86-2023 has been filed by the respondents-claimants, thereby, seeking enhancement of the compensation, so awarded by learned Tribunal.

For the convenience of discussion, the parties are referred to as making appearance before learned Tribunal.

Learned counsel for the parties heard.

So far as, the factum and manner of taking place of the accident is concerned, none of the respondents, upon whom the liability, as such, has been fastened, has filed the appeal and on this account, the aforesaid aspects, as such, warrants no further scrutiny. But anyhow, the insurance company has filed the appeal to challenge the quantum of compensation, so granted.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal, had taken the notional income of deceased Kartik Kumar Yadav, who was 16 years old, to be Rs.10,000/- per month, annual whereof, comes to be Rs.1,20,000/-. To the said amount, addition on the count of 'future prospects' was made to the extent of 40%, i.e. Rs.48,000/- and total earnings worked upon as Rs.1,68,000/-. Considering the same, while excluding grand-father from the consideration for the compensation, considering other number of dependents, who were three, deduction was made to the extent of 1/3rd, on account of 'personal expenses' and the loss of dependency was worked upon as Rs.1,12,000/- per annum. Considering the age of the deceased, multiplier applied was '18' and loss of the dependency was worked upon as Rs.20,16,000/-. Besides the same, under the conventional heads i.e. 'loss of estate' and 'funeral expenses', Rs.15,000/- each was granted. In total, Rs.20,46,000/- was granted. The said amount was ordered to be paid to respondents-claimants No.1 to 3, in equal shares and claimant-respondent No.4, was held not entitled to any compensation amount, being not dependent on the income of the deceased.

Being dissatisfied with the extent of compensation, so granted, the insurance company filed the present appeal to challenge the quantum of compensation.

It is submitted by learned counsel for the insurance company that since the deceased was a bachelor, the deduction out of the notional income, ought to be to the extent of 50%, on the count of 'personal expenses'. Besides the same, also it is submitted that only mother is entitled to compensation. However, father and sister, as such, cannot be considered dependent upon the deceased. As such, it is submitted that compensation, as granted by learned Tribunal, ought to be reduced, by way of deduction of 50% from the notional income, as assessed by learned Tribunal.

On the other hand, learned counsel for the respondents-claimants has resisted the claim of the appellant-insurance company. In fact, it is submitted by learned counsel for the respondents-claimants that cross-objections have also been filed for seeking enhancement of the compensation. It is submitted that earnings of the deceased, who belong to a well-off family, have been erroneously considered as Rs.10,000/- per month. It ought to be enhanced further and thus, consequential work on of the compensation payable, calls for enhancement. Moreover, under the conventional heads also, the amounts need to be further enhanced.

In view of the submissions made by learned counsel for the parties and as per prevalent settled law, the compensation, so worked upon, calls for re-determination.

Before proceeding further, it is pertinent to mention that the claim petition was filed by the father, mother, sister and grand-father of the deceased. So far as, grand-father of the deceased is concerned, he has been excluded from the compensation. No appeal, as such, has been filed to challenge the finding, so recorded by learned Tribunal. In the given circumstances, even compensation granted to father and sister has been challenged. In this regard, suffice to make mention to the document Mark P-6, which is Delhi University Form and fee receipt. Therein, while giving the details of the mother as well as father, the occupation of the father has been mentioned as Government Servant. In view of this recital, it is quite obvious that father of the deceased is having his own financial source of earnings. At the same time, it cannot be stated that father was not dependent upon the deceased, who was young man.

It is pertinent to mention 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 relative criteria to claim compensation for loss of dependency. Dependency does not mean necessarily means financial only, it also includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Considering the same and also father of the deceased to be in Government service, as spelt out from the document, the deceased may not be rendering any financial assistance to his father, but however, emotional and psychological dependency upon the deceased, by his father, as such, ought to be there. The emotional dependency of the parents of young man, who had died, as such, cannot be overlooked, more particularly, keeping in view the father being deprived of love and affection of his young son. In the light of the same, aspect of love and affection, is not to be considered as separate head for claiming compensation and the same is now apprehended under the count of 'loss of consortium'. As such, the father of the deceased is entitled to some compensation, though, extent of compensation, as compared to mother, may be less.

Similarly, the sister of the deceased, as such, has also been deprived of the sibling love and affection. In the light of the same, she is also entitled to loss of consortium and some amount of compensation, on similar terms, as observed aforesaid.

Learned Tribunal had taken the notional earnings of the deceased as Rs.10,000/- per month. From the evidence, coming on record, it stands established that deceased was student of BSc.-I, at the time of accident. From the educational in puts, which are coming forth, in the documents, so tendered in the evidence, it is evident that deceased was studying in Delhi University. Definitely, studying while being away from the house, reflects about the deceased to be belonging to fairly affluent family. In the given circumstances, more particularly, considering the educational status, as prevalent, on the date of accident, the earnings of the deceased, as such, cannot be equated, with that of un-skilled labourer. In this regard, it is pertinent to mention that as prevalent on the date of accident, the monthly earnings of the un-skilled labourer was Rs.9458.20. Considering the same, the earnings, so taken by learned Tribunal, is on lower side. In modest estimate, very close to the reality, the earnings of the deceased, as such, are taken to be Rs.13,000/- per month. However, since the deceased was a bachelor, the deduction, ought to be made of 50% instead of 1/3rd, as done by learned Tribunal, more particularly, when the father himself was in Government job, the sister and grand-father could not be taken to be dependent upon the deceased, during lifetime of the father. Thus, making deduction to the extent of 50%, the amount of notional earnings to be considered is Rs.6,500/- per month.

Considering the age of the deceased to be 16 years, as per ***Pranay Sethi's case***, addition of 40% ought to be made, on the count of 'future prospects'. Making it to be so, the income of the deceased is worked upon as Rs.6500+Rs.2600(40%)=Rs.9,100/-, annual whereof, comes to be Rs.1,09,200/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**18**', as applied by learned Tribunal and by applying the same, the loss of dependency, works out to be Rs.109200x18=**Rs.19,65,600/-**.

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)***. The concept of consortium, has been dilated in detail in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, and as per

*National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*
*Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*

the same, the claimants are entitled to compensation, for the loss of consortium, be it 'parental', 'spousal' or 'filial'.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, while making addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years, at present, the amount payable, on all the three aforesaid heads, is to the extent of **Rs.48,400/-, Rs.18,150/-** and **Rs.18,150/-**, respectively.

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

| | | |
|---|---|---|
| **Loss of dependency** | : | **Rs.19,65,600/-** |
| **Loss of consortium** | : | **Rs.1,45,200/-** |
| **Loss of estate** | : | **Rs.18,150/-** |
| **Funeral expenses** | : | **Rs.18,150/-** |
| **Total** | : | **Rs.21,47,100/-** |

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.21,47,100-20,46,000=Rs.1,01,100/-**. On the enhanced amount of the compensation i.e. **Rs.1,01,100/-**, 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.

In the light of the aforesaid work out, considering the relationship of the claimants with the deceased, out of the compensation as now awarded, respondents-claimants No.2 and 3 are held entitled to Rs.2 lakh each, whereas, respondent-claimant No.1 is held entitled to Rs.17,47,100/-.

In view of the aforesaid observations, the appeal filed by the insurance company i.e. FAO-3331-2022 is dismissed, with the modification of the extent of deduction on the count of 'personal expenses' of the deceased, to be 50%, instead of 1/3rd, as taken by learned Tribunal. However, cross-objections filed by the respondents-claimants, vis-a-vis, enhancement i.e. Cross-objection No.86-2023 stands allowed.

**February 12, 2024** **(ARCHANA PURI)**
Vgulati **JUDGE**

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