2024:PHHC:101788

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-788-2009 (O&M)

Sushila Devi and others

...Appellants

VERSUS

Bijender Singh and others

...Respondents

(ii) FAO-795-2009 (O&M)

Shanti Devi and another

...Appellants

VERSUS

Bijender Singh and others

...Respondents

Date of Decision: August 07, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Lalit Sharma, Advocate for
Mr.Sunil Kumar Sharma, Advocate
for the appellants.

Mr.D.R.Bansal, Advocate
for respondent No.3.

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ARCHANA PURI, J.

These are twin appeals filed by the appellants-claimants, thereby, seeking enhancement of the compensation, awarded by learned Motor Accident Claims Tribunal.

At the very outset, it is pertinent to mention that five claim petitions, arising from the same accident, were decided by learned Tribunal. On appraisal of the evidence, brought on record, learned Tribunal concluded about the accident to have taken place on 03.06.2003, on account of negligence of respondent No.1-Bijender Singh, driver of truck bearing registration No.HR-45-2969. As a result of the said accident, four occupants of the ill-fated car bearing No.HR-26E-6660 had died i.e. Dalbir Singh, Purshottam, Dharambir and Ashok Kumar and besides the same, another occupant of the car, namely, Jai Bhagwan, had sustained injuries.

Jai Bhagwan injured, as well as dependents of the aforesaid deceased persons, had filed separate claim petitions. On appraisal of the evidence, it was concluded that the accident had taken place, due to wrong parking of the offending truck, without taking precautions and the same resulted into death of four occupants of the car and injuries sustained by Jai Bhagwan.

So far as, the factum and manner of taking place of the accident as well as the liability is concerned, it is evident that none of the respondents, upon whom, the liability was fastened, as such, have filed any appeal.

Be it noted that the appeals in hand, have been filed by the appellants-claimants, for seeking enhancement.

FAO-788-2009 has been filed by widow, children and parents, for seeking enhancement of the compensation, on account of death of Dalbir Singh and FAO-795-2009 has been filed by the parents of deceased Ashok Kumar, for enhancement of the compensation.

Firstly, let us consider the compensation, qua death of Dalbir Singh. The claim petition was filed by widow of the deceased, his two minor children, namely, Rohit and Varsha as well as parents of the deceased. It is categoric claim of the claimants that deceased was 28 years old, at the time of accident. He was running a furniture shop and earning Rs.10,000/- per month. Also, it is categoric claim of the claimants, that they were dependent upon the income of the deceased.

However, learned Tribunal, on the basis of the evidence, brought on record, more particularly, Ex.P2, copy of the post-mortem report, had concluded about age of the deceased to be 30 years. Also further, learned Tribunal had taken the earnings of the deceased, as of casual labourer i.e. Rs.2400/- per month. 1/3rd from the same was deducted, on the count of 'personal expenses' and contribution towards family was taken as Rs.1600/- per month, annual whereof, comes to be Rs.19,200/-. While applying the multiplier of '18', the compensation as worked upon as Rs.3,45,600/-. Besides the same, another amount of Rs.6000/- was granted towards, transportation, funeral charges, last rites and consortium. In total, the compensation awarded was Rs.3,51,600/-.

However, the compensation, as worked upon aforesaid, definitely calls for re-computation, as per prevalent settled law.

So far as, the age of deceased Dalbir Singh is concerned, he falls in the age bracket of 28-30 yeas. Regarding indulgence of the deceased in running a furniture shop, there is categoric statement of Sushila Devi, widow of the deceased, who stepped into witness box as PW-1. Nothing material elicited out, in her cross-examination, to dislodge the version of running of furniture shop. Even, PW-9 Vishnu has been examined by the claimants, who has also deposed about indulgence of deceased Dalbir Singh in furniture shop, run under the name and style of Vishvakarma Furniture House and also, he stated that the deceased himself used to work as Carpenter at his furniture house, besides employing Ashok Kumar. PW-10 Anup Kumar, who runs a plywood shop, on the basis of the original bill, had proved Bill Ex.PW10/A, with regard to the purchase of plywood from his shop by M/s Vishvakarma Furniture House. The said bill is to the extent of Rs.31,056/-.

No doubt, there is no name mentioned about the deceased to be the proprietor of Vishvakarma Furniture House, but suffice to consider that this bill has been proved by PW-10 Anup Kumar, who is running the plywood shop. Even, outward challan, in the name of Vishvakarma Furniture House, is there on the record and therefore, in view of the outward challan, it cannot be said that the aforesaid bill is not genuine. The transaction of amount of Rs.31,056/-, is evident from the said bill. There is no reason coming forth, to discard the statement of PW-1 Sushila Devi. In any case, even if, the exact amount of earnings of the deceased, as such, is not spelt out, but definitely, the deceased cannot be equated with the casual labourer, so far as, assessment of earnings is required to be made.

In the given circumstances, while making some guess work, proximate to the reality, the earnings of deceased Dalbir Singh, are assessed as Rs.4000/- per month. To the said amount, considering the age of the deceased, as per ***Pranay Sethi case (supra)***, addition to the extent of 40%

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009

ought to be made, on the count of 'future prospects', which comes to be Rs.1600/-. As such, the monthly earnings comes to be Rs.5600/-.

The claimants, who are the dependents of the deceased are five in number. Considering the same, the deduction, on the count of 'personal expenses' as per ***Sarla Verma's case (supra)***, ought to be to the extent of 1/4th, instead of 1/3rd, as done by learned Tribunal. After making this deduction, the residue earning, which ought to be taken as loss of dependency, comes to be Rs.5600-1400=Rs.4200/- per month, annual whereof, comes to be Rs.50,400/-.

Learned Tribunal had applied the multiplier of '18', which is on higher side. Considering the age of the deceased, the appropriate and suitable multiplier, as per Sarla Verma's case (supra) to be applied is '**17**', and thus, by applying the same, the loss of dependency, works out to be Rs.50400x17=**Rs.8,56,800/-**.

Besides the same, taking into consideration, the claimants to be widow, two minor children, as well as both father and mother of deceased Dalbir Singh, all of them are entitled to compensation, on the count of 'spousal', 'parental' and 'filial' consortium as held in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***. As held in ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x5=Rs.2,42,000/-. Likewise, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

Considering the same, the compensation payable to claimants, on account of death of Dalbir Singh, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.8,56,800/-**
Loss of consortium	**:**	**Rs.2,42,000/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.11,35,100/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,35,100-3,51,600=Rs.7,83,500/-**.

Now, let us consider the compensation, qua death of Ashok Kumar. The claim petition was filed by parents of deceased Ashok Kumar, who had died in the same accident. It is the categoric claim of the appellants-claimants that their son Ashok Kumar was 19 years old and unmarried, at the time of accident and was working as Carpenter at Vishvakarma Furniture House and was earning Rs.6000/- per month.

Learned Tribunal, while considering the evidence, brought on record, had assessed the earnings of the deceased as Rs.2400/- per month, while considering him as casual labourer. 1/3rd was deducted, on the count of ‘personal expenses’ and his contribution towards family was taken as Rs.1600/- and annual dependency was worked upon as Rs.19,200/-. Thereupon, considering the age of the parents, multiplier of ‘11’ was applied and the compensation was worked upon as Rs.2,21,200/-. Besides the same, another amount of Rs.5000/- was granted towards transportation, funeral charges and last rites etc. Thus, total compensation of Rs.2,26,200/- was granted. (However, wrongly so mentioned, but the amount is be **Rs.2,16,200/-**)

Definitely, the work on of the compensation, as done by learned Tribunal, do call for re-computation, as per prevalent settled law.

Since, the deceased was Carpenter, in modest estimate, considering him to be skilled worker, his earnings, very near to proximate reality, are taken as Rs.2800/- per month. Keeping in view the age of deceased Ashok Kumar to be 19 years, as per ***Pranay Sethi's case (supra)***, addition to the extent of 40% ought to be made, on the count of 'future prospects'. Thus, the income of the deceased is worked upon as Rs.2800+1120(40%)=**Rs.3920/-** per month.

Considering the marital status the deceased and he being bachelor, as per Sarla Verma's case, the deduction, on the count of 'personal expenses', ought to be made to the extent of 50%, instead of 1/3rd, as done by learned Tribunal. Thus, the residue income, which ought to be taken as loss of dependency, comes to be Rs.3920-1960=Rs.1960/-, annual whereof, comes to be Rs.23,520/-.

However, learned Tribunal had erroneously applied the multiplier, while considering the age of the parents. It is the age of the deceased, which ought to be taken into consideration, as per ***Pranay Sethi's case (supra)***, for the application of the appropriate multiplier. Considering the age of the deceased to be 19 years, the appropriate and suitable multiplier, to be applied is '**18**' and thus, by applying the same, the loss of dependency, works out to be Rs.23520x18=**Rs.4,23,360/-**.

Besides the same, as per ***Magma's case (supra),*** each of the appellants-claimants are entitled to compensation, on the count of 'filial consortium'. As held in ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x2=Rs.96,800/-. Likewise, 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 claimants, on account of death of Ashok Kumar, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.4,23,360/-**
Loss of consortium	**:**	**Rs.96,800/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.5,56,460/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,56,460-2,16,200=Rs.3,40,260/-**.

In both the appeals, on the enhanced amount of the compensation i.e. **Rs.7,83,500/-** (in FAO-788-2009) and **Rs.3,40,260/-** (in FAO-795-2009), the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of respective appeals, till realization of the enhanced amount of compensation.

The compensation amount already awarded shall be apportioned as ordered by learned Tribunal. However, out of the enhanced amount, as now awarded in FAO-788-2009, appellant-claimant No.1-Sushila Devi is held entitled to Rs.2,83,500/-, appellants-claimants No.2 and 3 (children) are held entitled to Rs.1,50,000/- each and appellants-claimants No.4 and 5 (parents) are held entitled to Rs.1,00,000/- each.

However, the enhanced amount, as now awarded in FAO-795-2009, shall be disbursed to the appellants-claimants in equal shares.

Accordingly, the impugned Award dated 26.08.2008 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, both the appeals stand allowed.

August 07, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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