IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3536-2010 (O&M)
Date of Decision: February 07, 2024

Neeru Arora and others

...Appellants

VERSUS

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Amrita Nagpal, Advocate
for the appellants.

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

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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 Jitender Kumar, in a motor vehicular accident, which took place on 16.10.2007.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the respondents, are concerned, it is pertinent to mention that no appeal, as such, has been filed by the persons, so made liable, to challenge the Award and thus, findings so recorded on this count, does not warrant any further scrutiny.

It is the categoric claim of the appellants-claimants that deceased Jitender Kumar was self-employed and was running a business being proprietor of Shri Krishna International Giri Raj Complex, Hisar Road, Rohtak and was earning Rs.25,000/- per month. He was an income tax payee and he was aged about 30 years old. To so substantiate the vocation and the extent of earnings of the deceased, besides Neeru Arora, widow, stepping into witness box as PW-1, the appellants-claimants, have also examined Mahender Kumar as PW-2, who was accompanying the deceased and furthermore, also examined Vikas Kalra, Chartered Accountant as PW-5, who had brought the attested copies of the audit reports, which are Ex.P3 and Ex.P4. Furthermore, learned counsel for the claimants had tendered into evidence, copies of income tax returns, which are Ex.P5 to Ex.P8.

In the light of the aforesaid evidence, the findings, so recorded by learned Tribunal, on issue No.1, thereby, making observation that the income tax returns have not been placed on the file, to prove that the deceased was an income tax payee, is palpably wrong.

The earnings were taken as Rs.3,900/- per month, out of which, 1/3rd was deducted, on account of personal expenses and the loss of annual earnings was worked upon as Rs.31,200/-. Considering the deceased to be falling in the age group of 31-35 years, multiplier of '16' was applied and the compensation was worked upon as Rs.4,99,200/-. Besides the same, an amount of Rs.10,000/- was given on the count of 'loss of consortium' and Rs.5,000/- each was given on the counts of 'loss of estate' and 'last rites'. As such, the total compensation was granted to the extent of Rs.5,19,200/-, together with interest component.

But anyhow, in view the settled prevalent law and also, in view of the evidence, coming on record, the extent of compensation aforesaid, calls for re-determination.

Though, audit reports have been proved by the appellants-claimants by way of examination of Chartered Accountant, but however, it is pertinent to mention that Ex.P4 is the audit report, which was furnished on 26.10.2007, meaning thereby, it was furnished after the death of Jitender Kumar, in an accident, which took place on 16.10.2007. Therefore, chances of it being inflated, as such, cannot be ruled out and precisely, on this account, ought not to be taken into consideration. So far as Ex.P3 is concerned, the same also appears to be cryptic one, which states about Jitender Kumar (deceased) to be working on the post of Marketing Executive and his salary status has been given for the year 2002-2003, which is nowhere the case of the appellants-claimants, about the deceased to be working on the post of Marketing Executive of National Marketing. This, as such, has not been explained by the appellants-claimants and it ought not to be taken into consideration.

Now, coming to the income tax returns. Jitender Kumar died on 16.10.2007. The income tax return for the Assessment Year 2006-2007 is Ex.P8. This is the last income tax return filed by Jitender Kumar, during his lifetime and it bears his signatures also. Besides the same, there is also endorsement of the income tax office on Ex.P8. As such, the same can be taken into consideration.

As per the income tax return Ex.P8, the gross total income comes to be Rs.2,07,827/-. So far as, the age of the deceased to be 30 years is concerned, it is pertinent to mention that the date of birth of Jitender Kumar (since deceased), in the income tax return is 10.01.1976, which also finds reflection in the Pan Card, which has been proved as Ex.P9. Thus, on the date of accident i.e. 16.10.2007, the deceased is held to be about 31 years of age.

As per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, salary minus tax is to be taken into consideration to work upon the compensation. In the tax slab existing in the year 2006-2007, there was tax exemption upto the income of Rs.1,00,000/-. Thereafter, for an amount from Rs.1,00,000/- to Rs.1,50,000/-, it was 10% of the amount, exceeding Rs.1,00,000/-, which comes to be Rs.5,000/-. From Rs.1,50,000/- to Rs.2,50,000/-, it was 20% of the amount exceeding Rs.1,50,000/-. As already observed, the annual earnings of the deceased are taken to be Rs.2,07,827/-. Thus, from the amount of Rs.1,50,000/- to Rs.2,07,827/-, the taxable income comes to be Rs.57,827/- and the tax upon the same comes to be Rs.57,827x20%=Rs.11,565/-. So calculating, the total tax on the earnings of deceased comes to be Rs.5000+11565=Rs.16,565/. After deducting the aforesaid tax, the extent of annual earnings, as such, comes to be **Rs.2,07,827-16,565=Rs.1,91,262/-**.

Considering the deceased to be falling in the age group of 31-35 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.191262+Rs.76504(40%)=**Rs.2,67,766/-**.

Considering the number of dependents of the deceased, 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, the loss of dependency comes to be Rs.267766-89255(1/3rd)=Rs.1,78,511/-.

Considering the age of the deceased, as per ***Sarla Verma’s case,*** appropriate and suitable multiplier, to be applied is ‘**16**’ and by applying the same, the loss of dependency, works out to be Rs.178511x16= **Rs.28,56,176/-**.

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 the same, the claimants are entitled to compensation, on 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 Jitender Kumar, is re-computated, as herein given:-

Loss of dependency	:	**Rs.28,56,176/-**
Loss of consortium	:	**Rs.1,45,200/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.30,37,676/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.30,37,676-5,19,200=Rs.25,18,476/-**. On the enhanced amount of the compensation i.e. **Rs.25,18,476/-**, 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 apportionment and 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.

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

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