2024:PHHC:147328

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(898)

FAO-5562-2010 (O&M)
Date of decision:- 12.11.2024

Paramjit Kaur and others

...Appellants

Versus

Sukhpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Shrinkhla Singh, Advocate,
for the appellants.

Mr. Mayank Mathur, Advocate
for respondent No.3-Insurance Company.

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VIKAS BAHL, J. (ORAL)

1. Widow and two minor children (now major) of deceased-Dr.Mohd. Bhilla have filed the present appeal for enhancement of the compensation. The only issue which arises for consideration is with respect to the compensation to be awarded to the claimants as factum regarding death of deceased in a road accident involving the vehicle owned by respondent No.1, driven by respondent No.2 and insured by respondent No.3, is not in issue in the present case.

2. Learned counsel for the appellants/claimants has submitted that

the compensation of Rs.8,50,000/- awarded by the Tribunal is highly inadequate and the same deserves to be enhanced. It is submitted that the income of the deceased has been taken as Rs.90,000/- per annum, whereas, as per the income tax return of the year 2007-2008, the income of the deceased was Rs.95,000/- per annum, thus, at least the said amount should have been taken as the income of the deceased. It is also submitted that the multiplier which has been taken in the present case by the Tribunal is '14' and as the deceased was 39 years old, thus, the multiplier should have been taken as '15'. It is stated that the personal expenses to the extent of 1/3rd have been taken, whereas, as per law, the said deduction should have been 1/4th as there were four dependents of the deceased at the time of his death. It is further stated that only an amount of Rs.5,000/- has been awarded on account of funeral expenses, whereas, the said amount should have been Rs.18,150/- and the amount on account of loss of consortium has only been granted to the extent of Rs.5,000/-, whereas a total of Rs.1,93,600/- (there being four claimants) should have been awarded to the present appellants on the said count. It is submitted that the Tribunal has not taken into consideration the future prospects and thus, 40% of the income of the deceased is also required to be added on account of future prospects. It is further submitted that on account of the same, an additional amount of Rs.8,76,150/- deserves to be awarded to the present appellants along with interest @ 9% per annum. In support of her arguments, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme Court in cases titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National***

Insurance Company Limited Vs. Pranay Sethi and others reported as ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***. On behalf of the appellants, a chart has been submitted, the relevant portion of which has been reproduced herein below:-

"RESPECTFULLY SHOWETH:-

1. Details of the Deceased-

a. Name- Dr. Mohd. Bhilla
b. Date of Birth- 15.09.1969
c. Age-39 years
d. Educational Qualification- Bachelor of Electro Homeopathic Medicine and Surgery
e. Occupation- Doctor (Self Employed)
f. Date of Accident- 10.06.2008

2. INCOME as observed in the Award by Ld. Tribunal-

a. ***PW1 Randhir Singh,*** *Senior Income Tax Assistant, Income Tax Office Barnala, brought record of the Income Tax Returns filed by the deceased.*
b. ***PAN No.-*** *AJFPB6638M*
c. PW1 proved the income tax returns relating to Assessment year 2005-06, 2006-07, 2007-08 and 2008-09 which are ***Ex.PW1/A to Ex.PW1/D.***

- *2005-06: Rs. 75,000/-*
- *2006-07: Rs. 90,000/-*
- *2007-08: Rs. 95,000/-*
- *2008-09: Rs. 1,05,000/- (ITR filed by the claimant)*

3. COMPENSATION GRANTED BY LD TRIBUNAL-

HEAD	***COMPENSATION GRANTED***
Income taken	*Rs. 90,000/- per annum*
Personal Expenses Deduction	*1/3rd i.e. Rs. 60,000/-*
Multiplier	*14*
Compensation	*14 x Rs. 60,000/- i.e. Rs.8,40,000/-*
Loss of Consortium	Rs.5,000/-
Funeral Expenses	Rs.5,000/-
Total Compensation	Rs.8,50,000/-

xxx xxx xxx

5. COMPENSATION PRAYED IN APPEAL FOR ENHANCEMENT-

	HEAD	***COMPENSATION PRAYED***
i.	*Income*	*Rs. 95,000/- (ITR of 2007-08)*
ii.	*Future Prospects*	*40% of the Income i.e. Rs.38,000/-*
iii.	*Deduction towards personal expenditure*	*1/4th of (Rs. 95,000 + Rs. 38,000) = Rs.33,250/-* *Total Income comes to Rs. Rs.99,750/-*
iv.	*Multiplier*	*Of 15 i.e. Rs.99,750 x 15 = Rs. 14,96,250/-*
v	*Funeral Expenses*	*Rs.18,150/- (as Pranay Sethi 10% increase in every three years)*
vi.	*Loss of Estate*	*Rs.18,150/- (as Pranay Sethi 10% increase in every three years)*
vii	*Loss of Consortium*	*(as Pranay Sethi 10% increase in every three years)* *Spousal Consortium- Rs.48,400/- Parental Consortium- Rs. 48,400 each child Filial Consortium- Rs.48,400/- Final amount comes to Rs.1,93,600/-*
viii.	*Total Compensation*	*Rs.17,26,150/-*

6. FINAL AMOUNT TO BE GRANTED-

Total Compensation	*Rs. 17,26,150/-*
Compensation granted by Ld. Tribunal	*Rs. 8,50,000/-*
Amount to be granted	*Rs. 8,76,150/-*

CHANDIGARH *sd/- sd/-*
DATE:11.11.2024 *(TUSHAR SHARMA)(SHRINKHLA SINGH)*
ADVOCATES
COUNSEL FOR THE APPELLANTS"

3. Learned counsel appearing for respondent No.3-Insurance Company, on the other hand, has submitted that the rate of interest which is sought to be claimed by the appellants is highly excessive and at best the interest that can be awarded on the additional compensation should be 6% per annum.

4. This Court has heard learned counsel for the parties and has

gone through the Chart and is of the opinion that the entries made in the chart are in accordance with law and deserve to be approved.

5. Hon'ble the Supreme Court in para 42 of ***Sarla Verma's case*** (Supra) had observed as under:-

> *"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years,* ***M-15 for 36 to 40 years,*** *M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

6. A perusal of the above would show that for the age of 39 years, multiplier of '15' is to be applied.

7. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra), has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *59.3 While determining the income, an addition of 50% of*

actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 ***In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.*** *An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

60. The reference is answered accordingly. Matters be placed before the appropriate Bench."

8. A perusal of the above judgment would show that it was

observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which is required to be enhanced at the rate of 10% in every three years.

9. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium and children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
>
> ***21.1 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows***

compensation to the surviving spouse for loss of "company, society,co-operation, affection, and aid of the other in every conjugal relation."

21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. ***The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims.*** *In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.* ***Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count*** *5. However, there was no clarity*

> *with respect to the principles on which compensation could be awarded on loss of Filial Consortium.*
>
> *24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."*

10. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

11. In the present case, 40% of the income on account of future prospects has been rightly sought to be added, in the chart. The multiplier of '15' would be applicable in the present case as the age of the deceased was 39 years. The amount sought on account of funeral expenses, loss of estate and loss of consortium are also in accordance with the latest law. It has further been rightly stated that the deduction on account of personal expenses in the present case should be 1/4th instead of 1/3rd as there were four dependents at the time of passing of the award. Thus, on account of the same, the claimants are entitled to an additional amount of Rs.8,76,150/-. On the aspect of interest, it would be relevant to mention that this Court has repeatedly deemed it fit to award interest @ 7.5% per annum and is of the opinion that even in the present case, the said rate of interest would be appropriate.

12. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the impugned award dated 25.07.2009

is modified and respondent No.3-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.8,76,150/- to the appellants/claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of actual payment within a period of six weeks from today, in the same proportion as has been given in the award.

November 12, 2024 **(VIKAS BAHL)**
naresh.k **JUDGE**

Whether speaking/reasoned:- Yes
Whether reportable:- Yes