IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4157-2011 (O&M)
Date of Decision: January 10, 2024

Harjit Kaur and others

...Appellants

VERSUS

Sanjay Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Davinder Lubana, Advocate
for the appellants.

Mr.D.K.Dogra, 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 Gurmail Singh, in a motor vehicular accident, which took place on 31.03.2007.

On appraisal of the evidence adduced on record, learned Tribunal had assessed the earnings of the deceased as Rs.3,500/- per month, as casual/skilled labourer and considering the number of claimants-dependents, deduction to the extent of 1/4th was made, towards personal and living expenses. While so calculating, the loss of earnings was worked upon as Rs.2,625/- per month, annual whereof, comes to be Rs.31,500/-.

Considering the age of the deceased to be 45 years, multiplier of '15' was applied and loss of earnings was worked upon as Rs.4,72,500/-. Besides the same, amount of Rs.5,000/- each was granted on the count of 'funeral expenses' and 'loss of estate', total whereof, as worked upon as Rs.4,82,500/-. In addition thereto, another sum of Rs.10,000/- was granted to claimant No.1-wife of the deceased, on the count of 'loss of consortium'. Thus, total compensation granted was to the extent of Rs.4,92,500/-.

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 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.

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, the compensation worked upon by learned Tribunal, is just and reasonable and therefore, appeal should be dismissed.

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, included the one, rendered by the Constitution Bench in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, that 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 is essentially 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.

It is the categoric claim of the appellants-claimants that deceased Gurmail Singh was owner of truck bearing registration No.HR-68A-6725 and was earning handsome amount. To so substantiate this version, the widow of the deceased namely Harjeet Kaur-claimant No.1, herself stepped into witness box as PW-1 and in her affidavit Ex.PW1/A, she has categorically deposed about deceased Gurmail Singh to be a transporter and owner of truck bearing registration No.HR-68A-6725 and also that, he used to accompany the truck. Furthermore, she has also categorically stated therein that deceased also used to spend amount on his daily needs and also on the food of the cleaner and driver of the truck, out of the amount, so earned by him, while carrying the goods and also salary to the cleaner and driver was paid, out of the gross receipt. Further, she had also deposed that deceased was owner and skilled driver of the truck. Besides the same, she further proved the copy of RC/Token Tax paid receipt, which is Ex.P11 and receipt of GR Paliwal Transport Company, which is Ex.P12 and also proved, various payment receipts of the installments regarding financing of the truck in question.

Learned Tribunal had completely overlooked the testimony of the widow of the deceased, wherein, she had stated about avocation of transporter, followed by the deceased. The reason assigned for discarding her statement is that there is no documentary evidence, coming on record, about deceased to be transporter. It is always to be kept in mind that Motor Vehicle Act is a benevolent piece of legislation. It is summary proceedings and strict rules of evidence, as such, are not attracted, during the course of enquiry, under the said Act. Furthermore, it should be noted that during the course of evidence, apart from the statement of widow of the deceased, coming on record, with regard to avocation, so followed by the deceased, also documents are coming forth, which amply establish about the deceased to be owner of truck bearing registration No.HR-68A-6725. The Token Tax (Road Tax) Book entry in Form No.III, is coming on record and the same is Ex.P11, which reveals the name of the owner of the said truck to be Gurmail Singh (since deceased). Besides the same, also the receipts have come on record, with regard to payment of the installments qua financing of the said truck. Not only this, it should also be noted that even in the FIR, got registered at the instance of Parveen Kumar, there is specific mention made about the deceased to be owner of the truck bearing registration No.HR-68A-6725 and the said author of the FIR, also stated about deceased to be his employer.

Considering the aforementioned material, in any case, the earnings of the deceased, as such, cannot be taken to be that of casual/skilled labourer, as taken by learned Tribunal. Definitely, considering the deceased to be owner of a truck, he has to be treated as belonging to class above the skilled labourer. In the given circumstances, working upon the inputs of the expenditure incurred to maintain the truck and carrying on the transportation service, in modest estimate, the earnings of the deceased, as such, can be taken to be Rs.9,000/- per month.

Thus, the compensation, so awarded by learned Tribunal calls for re-computation, as per prevalent settled law.

Even though, as per post-mortem report recitals, the age of the deceased has been taken as 45 years, but the widow of deceased stated the deceased to be 44 years. However, no concrete evidence, with regard to age of the deceased, has come on record. But definitely, he fall within the age group of 44-45 years. Considering the same, as per ***Pranay Sethi's case***, addition of 25% 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.9000+Rs.2250(25%)=**Rs.11,250/-**.

Considering the number of dependents of the deceased, as per ***Sarla Verma's case***, the deduction to the extent of 1/4th has to be made, on the count of 'personal expenses'. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.11250-2812(1/4th)=Rs.8438/-, annual whereof, comes to be Rs.8438x12=Rs.1,01,256/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**14**' and by applying the

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same, the loss of dependency, works out to be Rs.101256x14= **Rs.14,17,584/-**.

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)***. However, in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the appellant-claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	**Rs.14,17,584/-**
Loss of consortium	:	**Rs.1,93,600/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.16,47,484/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.16,47,484-4,92,500=Rs.11,54,984/-**. On the enhanced amount of the compensation i.e.

Rs.11,54,984/-, 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 residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

However, it is pertinent to mention that in the Award, the total compensation had been granted to the claimants, with additional compensation of Rs.10,000/- to claimant No.1-widow. Hence, out of total compensation, as now awarded, children of deceased Gurmail Singh i.e. appellants-claimants No.2 and 3, namely, Manjit Kaur and Shunty are held entitled to Rs.4,00,000 each, father of deceased i.e. appellant-claimant No.4 namely Amar Singh, is held entitled to Rs.2 lakh, whereas, widow of deceased i.e. appellant-claimant No.1, namely Smt.Harjit Kaur, is held entitled to Rs.6,54,484/-. However, the compensation, if any, disbursed to the appellants-claimants, at any earlier stage, shall be adjusted accordingly, out of the compensation apportioned aforesaid.

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

January 10, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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