2024:PHHC:007120

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-7107-2011 (O&M)

National Insurance Company Limited

...Appellant

VERSUS

Sarika and others

...Respondents

(ii) FAO-1267-2012 (O&M)

Sarika and others

...Appellants

VERSUS

Karam Chand and others

...Respondents

Date of Decision: January 19, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Brij Bhushan Sharma, Advocate for
Mr.Deepak Suri, Advocate
for the appellant (in FAO-7107-2011) and
for respondent No.3 (in FAO-1267-2012).

Mr.Kunal Dawar, Advocate
for the appellants (in FAO-1267-2012) and
for respondents No.1 to 6 (in FAO-7107-2011).

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ARCHANA PURI, J.

These are two rival appeals, filed to assail the Award dated 06.06.2011 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Madan Singh @ Madan Singh Sharma, in a motor vehicular accident, which took place on

29.08.2010.

FAO-7107-2011 has been filed by the insurer of the offending car bearing registration No.UP-21B-5757.

FAO-1267-2012 has been filed by the claimants.

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

The essential facts, to be noticed are, as follows:-

That, on 29.08.2010 at about 4.00 p.m., Madan Singh @ Madan Singh Sharma, along with his brother Mukesh Kumar, was coming on motorcycle bearing registration No.DL-3SBQ-8467, from Merrut to Ballabhgarh. When they reached near HRT School, Duhai, in the area of Police Station Murad Nagar, Ghaziabad, then a Maruti car bearing registration No.UP-21B-5757, driven by respondent No.1-Karam Chand, in a rash and negligent manner and at a very high speed, came and struck into the motorcycle of Madan Singh @ Madan Singh Sharma, from backside, as a result whereof, Madan Singh had sustained injuries, which proved fatal. FIR No.427 dated 29.08.2010 under Sections 279, 304-A and 427 IPC was registered against Karam Chand, at the instance of Mukesh Kumar, who was accompanying the deceased, at the relevant time.

In the claim petition, further, it has been averred that Madan Singh @ Madan Singh Sharma was employed as Senior Designer with M/s Saipem Triune Engineering Private Limited and drawing salary of Rs.80,130/- per month and he was an income tax payee.

The dependents i.e. parents, wife and children had filed the claim petition for seeking compensation, to the extent of Rs.1.5 crore.

The driver and owner, in their separate written statement, besides taking preliminary objections, with regard to the maintainability, concealment of facts, locus standi, cause of action, also submitted that place of alleged accident is imaginary and FIR is wrong. In fact, no such accident had taken place and the vehicle, in question, has been involved later on. Respondent No.3, in its written statement had taken the plea that the deceased, being the driver of the motorcycle, was the sole author and wrong doer, in sustaining the alleged injuries on his person, resulting into his death, if any, but no accident, at all, occurred with the offending vehicle, being driven by respondent No.1-Karam Chand. Plea of contributory negligence was also raised.

Evidence was adduced. Even, respondent No.1-Karam Chand, driver of the offending car, stepped into witness box as RW-1 and even, respondent No.3-insurance company, tendered into evidence, insurance policy Ex.R4.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the age of the deceased to be 43 years and his salary to be Rs.80,130/- per month. After necessary deduction of the income tax, payable at the relevant time, the annual earnings of the deceased were taken to be Rs.8,14,618/-. However, it was concluded that father of the deceased cannot be considered to be dependent of the deceased, but the other legal heirs were stated to be dependents upon the income of the deceased. As such, the dependency was taken to be 1/4th and 1/4th of the income was deduction, on the count of 'personal expenses' of the deceased. Accordingly, compensation was granted to the extent of Rs.85,68,000/-.

Another amount of Rs.10,000/- was granted, on the count of ‘loss of consortium’, ‘loss of love and affection’ and towards ‘last rites’ of the deceased. Therefore, the total compensation was worked upon as Rs.85,78,000/-. Even, apportionment was worked upon and the liability of the respondents i.e. driver, owner and insurer of the offending car, was held to be joint and several.

Being dissatisfied with the Award, the insurance company filed FAO-7107-2011, thereby, disputing the negligence fastened upon the driver of the car in question and also challenged the extent of compensation granted to the claimants. Likewise, even the claimants filed the rival appeal i.e. FAO-1267-2012, thereby, seeking enhancement of the compensation.

At the very outset, while making reference to the evidence adduced before learned Tribunal, it has been submitted that negligence has been wrongly fastened upon the driver of the car, allegedly involved in the accident. In fact, it is it submitted that there is no evidence on the record to show that driver of the offending car was negligent in causing the accident. The driver of the car, namely Karam Chand, had stepped into witness box as RW-1 and categorically stated that he was not negligent in causing the accident. As such, the finding so recorded by learned Tribunal, on this account, is erroneous. Besides the same, also learned counsel for the insurance company has submitted that the quantum of compensation granted is also on higher side. Learned Tribunal ought to have relied upon the income tax return, on the record, which stated about the earnings of the deceased to be Rs.3,61,077/- per annum, but it has erroneously considered his earnings of the deceased as Rs.80,130/- per month and thus, the compensation, so worked upon, is on higher side.

On the other hand, learned counsel for the claimants has resisted the claim of the insurance company and has submitted that negligence, on the part of the Karam Chand, as such, stands duly established. Even, the compensation, so worked upon by learned Tribunal, is on lower side. As such, a prayer has been for extensive enhancement of the compensation.

It is categoric pleaded claim of the claimants that on 29.08.2010, deceased Madan Singh @ Madan Singh Sharma along with his brother was proceeding on a motorcycle from Merrut to Ballabhgarh and the offending car, being driven by its driver in a rash and negligent manner, had come and struck the motorcycle from backside, as a result whereof, Madan Singh @ Madan Singh Sharma had sustained injuries, which proved fatal.

To so substantiate this version, Mukesh Kumar, who was accompanying the deceased had stepped into witness box and he has categorically stated in consonance with the pleaded case. Furthermore, he had also got registered the FIR, which is Ex.P6 and recitals of the said FIR also corroborate the version, so put forth by the claimants. Even, Sarika, widow of deceased, had deposed about death of her husband, in a motor vehicular accident. Furthermore, post-mortem report has been proved, which is Ex.P1. Even, copy of challan has been proved as Ex.P8.

Even, Karam Chand, driver of the offending car had stepped into witness box as RW-1. Though, he had stated that on 29.08.2010 i.e. on the day of accident, he was driving the Maruti car bearing registration No.UP-21B-5757, but he stated that he did not cause any accident, on that date. However, in cross-examination, he admitted about a criminal case having registered against him and that he was challenged in the said case, in which, he is facing trial. Even though, the plea of false implication has been raised by the driver of the offending car, but however, no satisfactory evidence, apart form this oral evidence, has been brought on record. In fact, FIR was got lodged in the present case with promtitude and there was, as such, no scope for raising a false story, within a short spell of time, soon after the accident. It categorically states about the accident to have been caused, in the manner, as pleaded by he claimants, in the claim petition. However, no further steps had been taken by the respondent No.1, to allege about his false implication.

In the light of the evidence, as such, coming forth, learned Tribunal had correctly appraised the evidence and concluded about rashness and negligence, on the part of respondent No.1-Karam Chand, in causing the accident, which resulted into death of Madan Singh @ Madan Singh Sharma. In the light of the aforesaid conclusion, the extent of compensation, calls for re-appraisal.

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, including 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. It should always be kept in mind that 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 should be 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.

At this juncture, it should be noted that claimant-Roop Chand Sharma, father of deceased Madan Singh @ Madan Singh Sharma was denied compensation by learned Tribunal and compensation was only granted to other legal heirs of the deceased. However, 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 relevant criteria to claim compensation for loss of dependency. Dependency not 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, even though, the deceased may not be rendering financial assistance to his father, but however, emotional and psychological dependency upon the deceased, by his father, as such, ought to be there and considering the same, father also ought to be paid the compensation.

In this backdrop, it is pertinent to mention that the compensation granted by learned Tribunal calls for re-compuation, as per settled prevalent law.

It is the categoric claim of the claimants that deceased was employed as Senior Designer with M/s Saipem Triune Engineering Private Limited. PW-3 Sarika, widow of deceased, in her affidavit Ex.PW3/A, deposed about the avocation followed by her husband and his earnings to be Rs.80,130/- per month. Even, Mukesh Kumar, brother of the deceased, in hid affidavit Ex.PW4/A, also deposed about the avocation, so followed by the deceased and extent of his earnings. Besides the aforesaid witnesses, the claimants have also examined PW-2 Vishwajeet, Field Worker in Administration, M/s Saipem Triune Engineering Private Limited, who had brought the salary record of Madan Singh @ Madan Singh Sharma and deposed about the deceased to be employed in their company as Senior Designer and also deposed that he was getting salary of Rs.80,130/- per month and proved the photocopies of salary certificates Ex.P2, Ex.P3, photocopy of annual CTC Ex.P4 and photocopy of appointment letter Ex.P5. He categorically stated about aforesaid documents to have been signed by Ram Narain Singh, Head of the Department (HR).

Learned counsel for the insurance company submits that the aforesaid documents have not been duly proved. However, the submission, so made, is not tenable. It has been correctly held by learned Tribunal about the claimants have summoned the concerned person from the company to prove the employment and income of the deceased. In this regard, if the company had deputed PW-2 Vishwajeet, one of its employees, who on the basis of the record, had categorically deposed about employment as well as extent of earnings of the deceased and proved the salary certificates, the same ought to be taken into consideration. Perusal of the aforesaid documents categorically reveal that on 05.11.2007, appointment letter was issued to the deceased. His designation was Senior Designer (Piping) and his basic salary was Rs.26,780/-, besides other allowances. However, salary certificate dated 05.10.2010, which has come on record, specifically states about the detail of the salary of the deceased and vide letter dated 26.04.2010, looking at the performance of the deceased, his salary was revised w.e.f. 01.04.2010 and it was then Rs.80,130/- per month, relating to which, the break-up has also been given, copy whereof is Ex.P4.

During the course of arguments, learned counsel for the insurance company has placed reliance upon the acknowledgment of the ITR, copy whereof is Mark 'E' and he submits that the same ought to have been taken into consideration. However, it is pertinent to mention that it was for assessment year 2009-2010, when the gross total income of Madan Singh @ Madan Singh Sharma was Rs.4,51,047/- and after deduction, the total income of the deceased was Rs.3,51,047/-, on which, he had paid income tax of Rs.25,965/-, which goes to show that at the relevant time from 01.04.2008 to 31.03.2009, the deceased was earning Rs.38,000/- per month. However, it is pertinent to mention that in recognition of performance of deceased, as per Ex.P3, the company had raised his package w.e.f. 01.04.2010 to Rs.80,130/- per month. The accident in question had taken place on 29.08.2010. Considering the same, this extent of salary has been correctly taken into consideration for assessment of the compensation.

Taking the salary to be Rs.80,130/- per month, annual whereof comes to be Rs.9,61,560/-, as per the income tax slab, he was liable to pay the income tax, on this salary. At the relevant time, there was exemption from income tax upto the income of Rs.1,60,000/-. Thereafter, income tax applicable from Rs.1,60,000/- to Rs.5,00,000/- was 10% i.e. Rs.34,000/-. From Rs.5,00,000/- to Rs.8,00,000/-, the income tax applicable was 20% i.e. Rs.60,000/- and Rs.8,00,000/- above, i.e. Rs.961560-800000=Rs.1,61,560/- it was 30 %, which comes to be Rs.48,468/-. The income tax payable comes to be Rs.1,42,468/- and after adding education cess @ 3% i.e. Rs.4274/-, the total income tax payable comes to be Rs.1,46,742/-. Thus, after deduction of the tax, the earnings comes to be Rs.961560-146742=Rs.8,14,818/- per annum.

Considering the pleaded case as well as testimonies of claimants and recitals of the post-mortem report, learned Tribunal had appropriately taken the age of the deceased to be 43 years.

In consonance with the ***Pranay Sethi's case***, addition on the count of 'future prospects' also is to be made. Considering the age of the deceased, addition of 25% has to be made on this count, which comes to be Rs.203704/- Thus, the total earnings are taken to be Rs.814818+203704(25%)=Rs.10,18,522/- per annum.

However, keeping in view the number of dependents, deduction to the extent of 1/4th has to be made, as done by learned Tribunal and after making the deduction, the loss of dependency comes to be Rs.1018522-254630(1/4th)=Rs.7,63,892/- per annum.

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 same, the loss of dependency, works out to be Rs.763892x14= **Rs.1,06,94,488/-.**

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

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 Madan Singh @ Madan Singh Sharma, is re-computated, as herein given:-

Loss of dependency	:	**Rs.1,06,94,488/-**
Loss of consortium	:	**Rs.2,90,400/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.1,10,21,188/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.1,10,21,188-85,78,000=Rs.24,43,188/-**. On the enhanced amount of the compensation i.e. **Rs.24,43,188/-**, 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 compensation, as now awarded, be apportioned amongst the appellants-claimants, as ordered by learned Tribunal.

The impugned Award dated 06.06.2011 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, **FAO-7107-2011** filed by the insurance company stands dismissed, whereas, **FAO-1267-2012** filed by the claimants, stands allowed.

January 19, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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