2024:PHHC:036371

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7196-2011 (O&M)
Date of Decision: March 13, 2024

Seena Devi and another

...Appellants

VERSUS

Sukhrani and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vikram Singh, Advocate
for the appellants.

Ms.Ramneek Kaur Sandhu, Advocate
for respondents No.1 to 5.

Mr.Subhash Goyal and Mr.Vipul Sharma, Advocates
for respondent No.7.

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ARCHANA PURI, J.

Appellants Seena Devi and Master Sonu, who are LRs of deceased Kapoor Singh (owner of of Trala bearing registration No.HR-56-6194), have filed the present appeal to assail the Award dated 10.06.2010, whereby, the insurance company was exonerated from the liability to make the payment of the amount of compensation, as granted to the claimants by learned Motor Accident Claims Tribunal.

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

That, on 07.06.2008, Shiv Narayan along with Jhuri and some other labourers, was going on Trala bearing registration No.HR-56-6194, for unloading the cement bags at Silani gate, Jhajjar. Mangat Ram (driver of the offending vehicle) was driving the same, in a zig-zag manner and at very high speed. The deceased and other labourers were sitting on the cement bags in the said Trala. When they reached Kacha Badli road, near Anar Mandi, Jhajjar, the driver of the said Trala suddenly made a cut, as a result whereof, Shiv Narayan fell on the road and the wheel of the Tralla crossed over him. Shiv Narayan received grievous injuries and he was taken to Civil Hospital, Jhajjar, from where, he was referred to PGIMS, Rohtak, where he was declared dead. In the claim petition, it was also averred that the deceased was 35 years old, at the time of accident. He was labourer and earning Rs.6,000/- per month.

Kapoor Singh, owner of the offending vehicle had since died and therefore, the claim petition was filed qua his widow and son, namely Seena Devi and Master Sonu, who were impleaded as respondents 2(a) and 2(b) respectively. They had filed the separate written statement, whereby, they asserted about false case to have been registered against the driver and that the injured had sustained injuries, due to his own negligence. Even, the insurance company (respondent No.3 before learned Tribunal) had filed separate written statement, wherein, besides taking preliminary objections, it was also asserted that the deceased was travelling in the offending vehicle as an authorized/gratuitous passenger and also that driver of the offending vehicle was not holding valid and effective driving licence and that there was no valid and effective permit route as well as fitness certificate.

On appraisal of the evidence, brought on record, while holding the accident to have taken place due to rash and negligent driving of the offending vehicle by its driver Mangat Ram, the compensation was worked upon, while taking the earnings of the deceased as Rs.3600/- per month and after making deduction of 1/4th, on account of personal expenses, the earnings were taken as Rs.2700/- per month, the annual whereof, was worked upon as Rs.32,400/-. To the said amount, considering the deceased to be 35 years old, multiplier of '16' was applied and the amount of compensation was worked upon as Rs.5,18,400/-. Besides the same, an amount of Rs.5000/- each was granted towards, 'funeral expenses', 'love and affection' and 'loss of estate'. Further, on the count of 'loss of consortium', another amount of Rs.5000/- was granted to the widow of the deceased. Thus, the total compensation, in this manner was worked upon as Rs.5,38,400/-.

Furthermore, while considering the Tralla in question, to be a goods vehicle and taking the deceased as un-authorized passenger and concluded to be gratuitous passenger, it was held that insurance company is not liable to make the payment of the aforesaid compensation. Also, it was concluded that the route permit and fitness certificate had not been produced by the owner, therefore, it was held that vehicle was not having valid and effective route permit and fitness certificate and on this account also, the insurance company was held not liable to make the payment of the compensation. As a result thereof, the liability was fastened jointly and severally, only upon driver i.e. Mangat Ram and LRs of deceased Kapoor Singh, owner of the vehicle in question.

Feeling aggrieved by the aforesaid Award, the LRs of deceased-owner of the offending vehicle, namely Seena Devi and Master Sonu have filed the present appeal.

Before proceeding further, it is pertinent to mention that along with the appeal, an application bearing No.CM-30611-CII-2011, under Order 41 Rule 27 CPC was also filed, at the instance of the appellants, for seeking reception of National route permit, issued in the name of Kapoor Singh, vis-a-vis, vehicle bearing registration No.HR-56-6194 i.e. offending vehicle. The copy of the National route permit is Annexure A-1. Reply to the aforesaid application was also filed.

At the very outset, it is pertinent to mention that in pursuance of the filing of the National route permit, it was verified at the instance of the insurance company. In fact, the insurance company has also produced on record, copy of the verification report. Even, in the order dated 20.10.2015 passed by this Court, an observation was made by the Coordinate Bench that counsel for the insurance company submits that on verification of the permit, the same has been found to be valid, on the accident.

Perusal of Annexure A-1 reveals that National route permit is bearing No.635 NP/07. It is issued in the name of Kapoor Singh (since deceased owner) and relates to vehicle bearing registration No.HR-56-6194. It's period of validity is from 18.05.2008 to 17.05.2009, which covers the date of the accident also. The recitals of Annexures A-1, matches with the recitals of the verification report, as furnished by the insurance company. In the given circumstances, since the reception of this National permit is essential, for the just decision of the case, without prejudice to the rights of the parties, to be adjudicated on merits, the aforesaid application is allowed and the National route permit is taken on record.

Thus, it stands established that the offending vehicle was having valid and effective route permit, at the relevant time of accident.

Now, proceeding further, it is pertinent to mention that the offending vehicle is a Tralla, which is a goods carrier. It is categoric claim of the claimants that deceased Shiv Narayan was sitting on the cement bags and the Tralla, at the relevant time, was proceeding for unloading of the bags, at Silani Gate, Jhajjar. In the transit, the accident had taken place and the deceased fell down on the road, on account of rash and negligent driving of the offending vehicle by its driver Mangat Ram and the same resulted into sustaining of grievous injuries, on the person of Shiv Narayan, which proved fatal.

In the light of the same, it was for the purpose of unloading of cement bags, that the deceased was travelling in the vehicle in question and therefore, cannot be treated to be gratuitous passenger. May it be so, as far as insurance company is concerned, he would be termed to be a third party and therefore, the insurance company would be liable to pay the compensation and it cannot escape from its liability, while pleading that breach of terms of the policy had taken place. Thus, in view of the aforesaid, the findings of learned Tribunal, thereby, exonerating the insurance company, are hereby set aside and therefore, the liability of the insurance company, is also held to be joint and several with other respondents (before learned Tribunal) to make the payment of the compensation to the claimants.

Besides the aforesaid, learned counsel for the appellants have disputed the impugned Award, on the quantum of compensation. They alleged that the income assessed by learned Tribunal is on higher side.

Even, multiplier so applied, is on higher side and therefore, the compensation, so worked upon, calls for reduction.

On the other hand, learned counsel for the claimants has assiduously resisted the claim of the appellants. She submits that rather learned Tribunal had taken the earnings of the deceased on lower side and compensation worked upon is quite meagre, which calls for enhancement. Besides the same, she also claimed enhancement under the conventional heads.

Undisputedly, no appeal, as such, has been filed by the claimants to seek enhancement. May it be so, but however, whole case opens up before the Appellate Court, once the appeal has been filed, irrespective of the person, who had filed the appeal.

In this regard, useful reference is made ***Sharanamma v. North East Karnataka RTC, 2013 (11) SCC 517***, wherein, it was observed, as herein given:-

> *"10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as "the Act"), before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also. Even otherwise, it is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law."*

In view of the aforesaid, appeal under Section 173 of the Motor Vehicles Act and the applicability of Order 41 CPC, also not having been excluded, the normal rules which apply to appeals before High Court, are applicable. More precise, provision to be considered is Order 41 Rule 33 CPC, which deals with power of Court of Appeal.

In ***Pannalal vs State of Bombay and others, AIR 1963 SC 1516***, with respect to Order 41 Rule 33, the Hon'ble Apex Court held that wide wording of Order 41 Rule 33 CPC, was intended to empower the appellate court, to make whatever order it thinks fit, not only as between the appellant and the respondent, but also as between respondent and a respondent. It empowers the appellate court, not only to give or refuse relief to the appellant, by allowing or dismissing the appeal, but also to give such other relief to any of the respondent as "the case may require".

Furthermore, the Hon'ble Apex Court in ***Chaya vs. Bapusaheb, 1994(2) SCC 41***, held that this provision i.e. Order 41 Rule 33 C.P.C, is based on a salutary principle that the appellate court should have the power to do complete justice between the parties. The rule confers a wide discretionary power on the appellate court to pass such decree or order as ought to have been passed or as the case may require, notwithstanding the fact that the appeal is only with regard to a part of the decree or that the party in whose favour the power is proposed to be exercised, has not filed any appeal or cross-objection.

In this backdrop, for doing justice and to award just compensation, provisions of Order 41 Rule 33 CPC are to be invoked.

In the given circumstances, the submissions, so made by learned counsel for the claimants for seeking enhancement of the compensation, should be taken into consideration, as the case re-opens.

In the light of the aforesaid, it is pertinent to mention that the deceased was asserted to be working as a labourer and earnings Rs.6000/- per month. However, learned Tribunal had considered the earnings of the deceased to be Rs.3,600/- per month, which was at par with the minimum wages, prevalent at the relevant time in the State of Haryana. However, to this amount, considering the age of the deceased to be 35 years, addition of 40% ought to be made, on the count of 'future prospects', as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***. Making it to be so, the income of the deceased is worked upon as Rs.3600+1440(40%)=**Rs.5,040/-**.

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 1/4th has to be made, on the count of 'personal expenses'. Thus, making this deduction, the loss of dependency comes to be Rs.5040-1260(1/4th)=Rs.3780/-, annual whereof, comes to be Rs.45,360/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**15**' and by applying the same, the loss of dependency, works out to be Rs.45360x15=**Rs.6,80,400/-**.

Besides the aforesaid, under the conventional heads, as per ***Pranay Sethi's case (supra)***, the compensation ought to be paid, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'. As per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required.

In view of the same, appellants-claimants are entitled to compensation, on the aforesaid counts. However, taking into consideration the enhancement as provided in ***Pranay Sethi's case (supra)***, to the extent of 10%, after every three years of passing of the judgment, the compensation payable, on the count of 'loss of consortium' is to the extent of **Rs.48,400/-**, to each of the claimants and on the similar pattern, 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 Shiv Narayan, is re-computed, as herein given:-

Loss of dependency	:	**Rs.6,80,400/-**
Loss of consortium	:	**Rs.1,93,600/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.9,10,300/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.9,10,300-5,38,400=Rs.3,71,900/-**. Out of the enhanced compensation, respondents-claimants No.2 to 5, are held entitled to Rs.50,000/- each and respondent-claimant No.1 is held entitled to residue amount of Rs.1,71,900/-. On the enhanced amount of the compensation i.e. **Rs.3,71,900/-**, 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. As already observed aforesaid, the driver, owner and insurance company are held liable jointly and severally, to pay the compensation to the claimants.

In view of the aforesaid terms, the present appeal stands allowed, with the modification of enhancement of compensation.

The pending civil misc. applications, if any, stand disposed of.

March 13, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**