IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-708-2012 (O&M)
Date of Decision: July 22, 2024

Rekha and others

...Appellants

VERSUS

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Ms.Anamika Mehra, Advocate
for respondent No.2.

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<u>ARCHANA PURI, J.</u>

The present appeal has been filed by the appellants-claimants, thereby, questioning the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal.

Vide impugned Award dated 12.09.2011, three claim petitions, vis-a-vis, injuries sustained by Sunil Kumar as well as Kartar Singh and qua death of Subhash Chander Kansal were decided. The present appeal has been filed by the claimants of MACT No.85 of 2010, qua death of Subhash Chander Kansal.

On appraisal of the evidence, brought on record qua the aforesaid claim petition, learned Tribunal had awarded compensation to the extent of Rs.5,50,000/-, to the appellants-claimants, together with interest component. Being aggrieved, the appellants-claimants have filed the present appeal, thereby, seeking enhancement of the compensation.

So far as, the factum of the accident and manner of taking place of the same, as well as the liability, fastened upon the respondents is concerned, suffice to consider that no appeal, as such, has been filed by the respondents, to dispute the same. Hence, there is no necessity to further dwell upon these aspects.

Rekha, widow of deceased Subhash Chander Kansal had stepped into witness box as PW-1. It is her pleaded case that the deceased was 37 years old. Considering there to be no documentary evidence, be it in the form of birth certificate or matriculation certificate, learned Tribunal had appropriately considered the recitals of the post-mortem report and took the age of the deceased as 37-38 years, at the time of accident. Even, PW-1 Rekha, widow of the deceased, in cross-examination had stated the date of birth of the deceased to be 08.07.1972. Taking this to be the date of birth, the age of the deceased has been appropriately considered to be 37-38 years.

It is the pleaded case that deceased was running business in the name of M/s Hindustan Auto Paints and being self employed and he was earning Rs.30,000/- per month. To so substantiate, the appellants-claimants had examined PW-5 Aman Ahooja, Chartered Accountant, who had brought the balance sheet, profit and loss account as well as account books maintained by the aforesaid firm of the deceased for the year ending 31.03.2009 and audit report Ex.p3. He also deposed about having prepared the last income tax return, on behalf of the deceased and submitted on 31.07.2009. The original acknowledgment of the same has been proved as Ex.P1. As per the said return, he deposed that Rs.17,000/- was tax payable and the gross total income of the deceased was Rs.3,05,100/-.

However, the testimony of said witness was discarded by learned Tribunal, while taking into consideration that the income tax return, as such, has not been proved and merely having a PAN card, is not sufficient to prove that deceased was an income tax assessee.

Taking it to be so, the monthly earnings of the deceased, considering him to be a casual worker, was taken as Rs.4500/- per month and thereupon, deduction to the extent of 1/3rd was made and loss of dependency was taken as Rs.3,000/- per month, the annual whereof is Rs.36,000/-. Upon this amount, considering the age of the deceased, the multiplier of '15' was applied. Besides the same, another amount of Rs.10,000/- was granted towards funeral, transportation and consortium. Thus, the total compensation was worked upon as Rs.5,50,000/-.

However, the compensation so worked upon, do call for re-determination, in view of the prevalent law.

Firstly, it is pertinent to mention that the 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. Considering the same, outrightly, the testimony of PW-5 Aman Ahooja, Chartered Accountant, as such, cannot be discarded, as done by learned Tribunal. The acknowledgment of the Income Tax Department is Ex.P1. Very true, the income tax return, as such, has not come on record, but however, beneficial reference can be made to this acknowledgment receipt, which was issued by the Income Tax Department on 31.07.2009, i.e. prior to the death of Subhash Chander Kansal. Though, learned Tribunal had asserted that the same having been fabricated, as such, cannot be ruled out, but however, this is not an appropriate observation. Since, as observed aforesaid, the motor accident claim is summary procedure, the documents coming forth, have to be beneficially considered, unless and until, the same are proved to be fabricated. No evidence, as such, has been led by the respondents to controvert the genuineness of the said acknowledgment. Leave aside the same, but one thing is for sure that deceased was indulging in the business of M/s Hindustan Auto Paints and he was an income tax payee. In any case, the earnings of the deceased, cannot be equivalent to that of a casual worker. He was definitely much better placed than a casual labourer. Even if the extent of amount of earnings as reflected in Ex.P1, as such, is not to be considered, but however, considering the circumstances, spelt out, in the modest estimate, proximate to the reality, the earnings of the deceased, can appropriately be considered as Rs.20,000/- per month, annual whereof, comes to be Rs.2,40,000/-.

Considering this extent of annual income of the deceased, as per prevalent income tax, at the relevant time, the income upto Rs.1,50,000/- was exempted and for next subsequent amount from Rs.1,50,000/- to Rs.3,00,000/- (in the present case Rs.1,50,000-2,40,000/-) the tax was 10% i.e. Rs.9000/-. After said deduction of the aforesaid amount from the annual income, the residue earnings is taken as Rs.2,31,000/-.

Considering the deceased to be 37 years old, as per guidelines

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laid down in ***Pranay Sethi's case***, addition of 40%, ought to be made, on the count of 'future prospects'. Thus, the annual income of the deceased is worked upon as Rs.231000+92400(40%)=**Rs.3,23,400/-**.

Looking at the number of dependents, as per ***Sarla Verma's case***, the deduction ought to be made to the extent of 1/4th, instead of 1/3rd, as done by learned Tribunal, on the count of 'personal expenses'. Thus, after deducting the same, the loss of dependency is worked upon as Rs.323400-80850(1/4th)=**Rs.2,42,550/-**.

So far as, the application of multiplier is concerned, considering the age of the deceased, as per ***Sarla Verma's case (supra)***, the appropriate and suitable multiplier, to be applied is '**15**', as applied by learned Tribunal and while applying the same, the loss of dependency, works out to be Rs.242550x15=**Rs.36,38,250/-**.

At this juncture, it is pertinent to mention that learned Tribunal had granted compensation to the extent of Rs.10,000/- under the conventional heads, like 'funeral', 'transportation' and 'consortium'. But however, as held in ***Pranay Sethi's case (supra)***, amounts are to be paid under the conventional heads, like, '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. Thus, the wife, children and mother of the deceased, are also entitled to 'spousal', 'filial' and 'parental' consortium, on the count of 'loss of consortium'.

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As per ***Pranay Sethi's case (supra)***, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the count of 'loss of consortium', works out to be, Rs.48,400/- to each of the claimants i.e. Rs.48400x4=**Rs.1,93,600/-** 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 appellants-claimants, on account of death of Subhash Chander Kansal, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.36,38,250/-**
Loss of consortium	**:**	**Rs.1,93,600/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.38,68,150/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.38,68,150-5,50,000=Rs.33,18,150/-**. On the enhanced amount of the compensation i.e. **Rs.33,18,150/-**, 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 amount already awarded shall be apportioned as ordered by learned Tribunal. However, out of the enhanced amount, as now awarded, appellant-claimant No.1 is held entitled to Rs.16,00,000/-, appellants-claimants No.2 and 3 are held entitled to Rs.7,00,000/- each and appellant-claimant No.4 is held entitled to residue amount of Rs.3,18,150/-.

Accordingly, the impugned Award dated 12.09.2011 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, the present appeal stands allowed.

July 22, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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