IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2672-2013 (O&M)

Karan Singh and another

...Appellants

VERSUS

Satish Kumar and others

...Respondents

(ii) FAO-2860-2013 (O&M)

Smt.Saroj Devi and others

...Appellants

VERSUS

Satish Kumar and others

...Respondents

(iii) FAO-3460-2013 (O&M)

Cholamandalam MS General Insurance Co. Ltd.

...Appellant

VERSUS

Smt.Saroj and others

...Respondents

Date of Decision: August 05, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: None for the appellants (in FAO-2672-2013).

Mr.Rakesh Nehra, Advocate with
Ms.Himani Anand, Advocate
for the appellants (in FAO-2860-2013),
for respondents No.1 to 3 (in FAO-3460-2013).

Mr.Rajneesh Malhotra, Advocate
for the appellant (in FAO-3460-2013) and
for respondent No.7 (in FAOs No.2672 and 2860-2013).

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ARCHANA PURI, J.

The rival appeals have been filed by the appellants-claimants as well as the insurance company to question the Award dated 04.01.2013 passed by learned Motor Accident Claims Tribunal. The sole question involved in the above-mentioned appeals is with regard to the quantum of compensation. The accident had taken place on 04.05.2008, as a result whereof, Bijender, son of Karan Singh and Smt.Kalawati as well as Krishan Kumar, husband of Saroj Devi and father of minor claimants Ajay Kumar and Vijay Kumar had died.

On appraisal of the evidence, brought on record, learned Tribunal had reached conclusion that the accident had taken place, due to rash and negligent driving of Santro car bearing registration No.HR-10L-6248, by respondent-Satish Kumar and the same resulted into death of Bijender and Krishan Kumar.

So far as, deceased Bijender is concerned, it was categoric claim of the appellants-claimants (parents) that he was running milk dairy and was an agriculturist and was also student of Bachelor of Arts and his monthly earnings were Rs.25,000/-. However, learned Tribunal assessed his monthly earnings to be Rs.4500/-, annual whereof, was taken as Rs.54,000/-. As deceased Bijender was bachelor, deduction to the extent of 50% was made and dependency was taken as Rs.27,000/- per annum. Thereupon, multiplier of '14' was applied and the compensation was worked upon as Rs.3,78,000/-. Besides the same, another Rs.10,000/- was awarded towards 'love and affection' and equivalent was awarded towards 'loss of estate'. In total, compensation granted was Rs.3,98,000/-.

So far as, this amount of compensation awarded by learned Tribunal is concerned, the insurance company, as such, has not questioned the same, by way of filing of separate appeal. In fact, FAO-2672-2013 is the appeal filed by the parents of deceased Bijender, thereby, questioning the adequacy of the compensation awarded.

Definitely, the compensation, so worked upon, do call for re-determination, as per the prevalent settled law.

From the evidence, it stand established that the deceased was 22 years old and was pursing Bachelor of Arts degree. This in itself indicate that he was a bright student. Considering his educational input, learned Tribunal had erroneously considered the earnings of the deceased, equivalent as that of a daily wager, as per minimum prevalent wages.

Definitely, on completion of graduation, the deceased would have been gainfully employed and making a modest earning, but definitely above, as that of a labourer. Therefore, even on a conservative estimate, it would be appropriate to reckon the income as Rs.5,000/- per month. However, considering the age of the deceased, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition to the extent of 40% ought to be made, on the count of 'future prospects', which comes to be Rs.2000/-. As such, the monthly earnings comes to be Rs.7000/-.

On account of deceased Bijender, being bachelor, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, deduction to the extent of 50%, has to be made, on the count of 'personal expenses. Thus, the residue amount, which ought to be taken as loss of dependency, comes to be Rs.3500/- per month, annual whereof, comes to be Rs.42,000/-.

Learned Tribunal had applied the multiplier of '14', which is on a lower side. It is the age of the deceased, which ought to be taken into consideration, as per ***Pranay Sethi's case (supra)***, for the application of the appropriate multiplier. Considering the age of the deceased, the appropriate and suitable multiplier, to be applied is '**18**', and thus, by applying the same, the loss of dependency, works out to be Rs.42000x18=**Rs.7,56,000/-**.

Besides the same, on the count of 'loss of consortium', as held in ***Pranay Sethi's case (supra)***, each of the appellants-claimants is entitled to Rs.48,400/- i.e. Rs.48,400x2=Rs.96,800/- and this amount, also comprehends the aspect of 'love and affection' as held in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***, and therefore, no separate compensation ought to be granted on the count of 'love and affection', as granted by learned Tribunal. Likewise, 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 Bijender, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.7,56,000/-**
Loss of consortium	**:**	**Rs.96,800/-**

Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.8,89,100/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.8,89,100-3,98,000=Rs.4,91,100/-**. On the enhanced amount of the compensation i.e. **Rs.4,91,100/-**, 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, qua disbursement and liability to pay compensation, qua death of Bijender, as ordered by learned Tribunal, shall remain the same.

Now, let us consider the compensation, as awarded by learned Tribunal, qua death of Krishan Kumar.

The claim petition was filed by widow and minor children, namely, Saroj Devi, Ajay Kumar and Vijay Kumar. It is the categoric claim of the appellants-claimants that the deceased Krishan Kumar was earning Rs.18,000/- per month, as he was serving as Driver in Haryana Roadways, Rohtak depot. He was asserted to be 46 years old.

However, learned Tribunal has very appropriately taken into consideration Ex.P3, which is the copy of the order passed by General Manager, Haryana Roadways, with regard to the fixation of family pension, to make assessment of the age of the deceased. In Ex.P3, the date of birth of Krishan Kumar is mentioned as 25.04.1962. Considering the said date of birth, the deceased is established to be 46 years old. From Ex.P3, it is evident that the last pay of the deceased along with allowances was

Rs.13,590/- per month. Thus, appropriately, learned Tribunal had considered the extent of monthly income as Rs.13,590/-.

Since, deceased was less than 50 years of age and having permanent job, therefore, on the count of 'future prospects', addition was made to the extent of 30%, which comes to be Rs.4077/-. Thus, the total income was worked upon as Rs.17,667/-, annual whereof was worked upon as Rs.2,12,004/-. Out of which, Rs.2,00,000/- was taken as exempted from tax and the residue income of Rs.12,004/- was taken as taxable income to the extent of 10%. Thus, after deducting 10%, the residue income was taken as Rs.2,10,804/-, which in itself is erroneous. But anyhow, after making deduction of 1/3rd, on the count of 'personal expenses', the loss of dependency was worked upon as Rs.210804-70268=Rs.1,40,536/-. After applying multiplier of '13', the compensation was worked upon as Rs.18,26,968/-. Besides the same, another amount of Rs.5,000/- was granted, on the count of 'loss of consortium' to the widow and another Rs.5000/- was granted towards 'funeral expenses'. Besides the same, Rs.10,000/- was awarded on the count of 'loss of estate'. Thus, the total compensation was worked upon as Rs.18,41,968/-.

Seemingly, there is mistake made by learned Tribunal, with regard to the calculation of the amounts, while taking into consideration various counts. However, the compensation, as worked upon aforesaid by learned Tribunal, do call for re-computation, as per prevalent settled law.

Both the parties are ad idem, with regard to the extent of earnings as established from Ex.P3, which was to the extent of Rs.13,590/-, annual whereof comes to be Rs.1,63,080/-. It is pertinent to mention that as per prevalent tax slab, for the year 2007-2008, there was exemption of tax upto the income of Rs.1,00,000/- and not Rs.2,00,000/- as worked upon by learned Tribunal. From the income of Rs.1,00,000/- to Rs.1,50,000/-, the tax payable was 10%, which comes to be Rs.5,000/-. Thereafter, from Rs.1,50,000/- to Rs.2,50,000/-, the tax was 20%. In the present case, it would be Rs.1,63,080-Rs.1,50,000=Rs.13080x20%=Rs.2616/-. Therefore, the total tax payable is to the extent of Rs.7616/-. After deducting this amount, the residue earnings comes to be Rs.163080-7616=Rs.1,55,464/-.

To the aforesaid amount, considering the age of deceased Krishan Kumar to be 46 years, as per ***Pranay Sethi's case (supra)***, addition to the extent of 30% ought to be made, on the count of 'future prospects'. Thus, the annual income of the deceased is worked upon as Rs.155464+46639(30%)=**Rs.2,02,103/-**.

Considering the number of dependents, as per ***Sarla Verma's case (supra)***, deduction to the extent of 1/3rd has to be made, on the count of 'personal expenses. Thus, the residue amount, which ought to be taken as annual loss of dependency, comes to be Rs.202103-67367=Rs.1,34,736/-.

Considering the age of the deceased, the appropriate and suitable multiplier, to be applied is '**13**' as applied by learned Tribunal, and thus, by applying the same, the loss of dependency, works out to be Rs.134736x13=**Rs.17,51,568/-**.

Besides the same, as per ***Magma's case (supra),*** each of the appellants-claimants is entitled to compensation, on the count of 'loss of consortium'. As held in ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium is to the extent of

Rs.48,400/- i.e. Rs.48,400x3=Rs.1,45,200/-. 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 Krishan Kumar, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.17,51,568**
Loss of consortium	**:**	**Rs.1,45,200/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.19,33,068/-**

In the light of the aforesaid conclusion, now the question arises, about the deduction to be made, vis-a-vis, the amount to be received by widow-Saroj, under the Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006. In this regard, suffice to make reference to ***Shashi Sharma's case (supra)***, wherein, the Hon'ble Supreme Court had observed, as herein given:-

> *"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependents/claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased*

> *Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello's case, 1999 ACJ 10 (SC) and Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC).*

Furthermore, in ***Birender's case (supra)***, it was held by the Hon'ble Supreme Court that amount received under the Financial Assistance Rules 2006, ought to be deducted.

In the light of the aforesaid, as per Ex.P3, widow-Smt.Saroj Devi was held entitled to financial assistance per month, while taking the salary of the deceased as Rs.13,590/-. In view of the same, the widow was held entitled to financial assistance of Rs.13,590/- upto 30.04.2020. Taking it to be so, it was for the period of 144 months that the widow ought to be receiving financial assistance to the extent of Rs.13,590/- per month, which comes to be Rs.13590x144=Rs.19,56,960/-. The compensation, as now worked upon, in the present case, is to the extent of Rs.19,33,068/-.

Learned counsel for the appellants-claimants has made submission for the grant of interest, on the amount of compensation worked upon. However, the submission so made, is bereft of merits. It is pertinent to mention that the order Ex.P3 was passed on 22.03.2008, but however, the claim petition was filed on 25.03.2009. Thus, extending of financial assistance as per Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006, was ordered, much prior to the filing of the claim petition, in hand. Consequently, no entitlement is made out for grant of interest. However, considering the differential amount, not to such an extent, the same calls for no deduction, on account of the calculation, made aforesaid.

In view of the aforesaid observations, the appeal filed for enhancement of the compensation by appellants-claimants, qua death of Krishan Kumar i.e. FAO-2860-2013 as well as the appeal filed, at the instance of the insurance company i.e. FAO-3460-2013 are hereby dismissed. However, the appeal filed for enhancement of the compensation by the appellants-claimants, qua death of Bijender i.e. FAO-2672-2013 stands allowed.

August 05, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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