IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-4097-2014 (O&M)

Reliance General Insurance Co. Ltd.

...Appellant

VERSUS

Jasbir Kaur and others

...Respondents

(ii) FAO-5999-2015 (O&M)

Jasbir Kaur and others

...Appellants

VERSUS

Harbhajan Singh and others

...Respondents

Date of Decision: July 19, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjeev Kodan, Advocate
for the appellant (in FAO-4097-2014) and
for respondent No.3 (in FAO-5999-2015).

Ms.Rakhi Sharma, Advocate
for the appellants (in FAO-5999-2015) and
for the respondents No.1 to 5 (in FAO-4097-2014).

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ARCHANA PURI, J.

These are two rival appeals filed to assail the Award dated 10.04.2014 passed by learned Motor Accident Claims Tribunal, thereby, questioning the adequacy of the compensation awarded to the claimants, on account of death of Baljit Singh, in a motor vehicular accident, which took place on 28.10.2012.

FAO-4097-2014 has been filed by the insurance company, thereby, seeking reduction of the quantum of compensation, whereby, FAO-5999-2015 has been filed by the claimants, thereby, seeking enhancement of the compensation.

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

So far as, the factum and manner of taking place of the accident, as well as the liability, so fastened upon the respondents i.e. driver, owner and insurer of the offending vehicle, is concerned, 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.

On appraisal of the evidence, brought on record, considering the deceased to be 25 years old and also taking into consideration, the specific version that father of the deceased was having 3 acres of land, which was cultivated by the deceased, the earnings of the deceased was taken as Rs.10,000/- per month, annual whereof comes to be Rs.1,20,000/-. Furthermore, multiplier of '18' was applied, while considering the age group of the deceased to be between 21-25 years and the compensation was worked upon as Rs.21,60,000/-. Besides the same, considering his age to be below 40 years, addition of 50%, on the count of 'future prospects' was made and the income was taken as Rs.32,40,000/-. Considering the number of dependents, 1/4th was deducted on the count of 'personal expenses', which is to the extent of Rs.8,10,000/-. Thus, the loss of dependency was worked upon as Rs.24,30,000/-. Besides the aforesaid amount, Jasbir Kaur, widow of the deceased was held entitled to Rs.1 lakh, on the count of 'loss of consortium' and sons of the deceased, namely Rajbir Singh and Harjasjit Singh were also held entitled to an amount of Rs.1 lakh, on account of loss of care and guidance. Besides the same, another amount of Rs.25,000/- was granted, on the count of 'funeral expenses'. Thus, the total compensation, awarded by learned Tribunal was Rs.26,55,000/-.

Being dissatisfied with the extent of compensation, both the insurance company as well as claimants have filed the rival appeals, the particulars have been given aforesaid.

At the very outset, learned counsel for the insurance company has submitted that learned Tribunal, without any satisfactory evidence, coming on record, with regard to the source of livelihood of the deceased, had considered the earnings of the deceased as Rs.10,000/- per month. Learned counsel has placed reliance upon the Notification dated 14.09.2012, issued by the Labour Commissioner, Punjab, which was effective from the date 01.09.2012 and on the basis thereof, it is submitted that the maximum wages for agricultural labourer without food was Rs.181.64/- per day, monthly whereof, comes to be Rs.5449/-. As such, the compensation worked upon by learned Tribunal is on higher side. Besides the aforesaid, it is submitted that considering the deceased to be 25 years old, since he was not having permanent job and self employed, addition on the count of 'future prospects' ought to have been made to the extent of 40% instead of 50%, as done by learned Tribunal.

Also, learned counsel for the insurance company submits that the deduction made on the count of 'personal expenses' is also on lower side. Further, it is submitted that no amount could be given, on account of loss of care and guidance, as awarded by learned Tribunal. As such, a prayer was made for reduction of the compensation, so worked upon by learned Tribunal.

On the other hand, learned counsel for appellants-claimants has resisted the claim of the insurance company. It is submitted that the compensation granted by learned Tribunal, calls for enhancement. It is not just and appropriate compensation, worked upon by learned Tribunal. She submits that no reliance, as such, could be placed upon the Notification, as father of the deceased was having 3 acres of land, which was cultivated by the deceased and in these circumstances, the earnings taken as Rs.10,000/- per month, is not excessive. Rather, it calls for enhancement.

Considering the rival submission, made by learned counsel for the parties, the compensation worked upon by learned Tribunal, do call for re-computation, as per the prevalent settled law.

So far as, the age of the deceased is concerned, suffice to consider the matriculation certificate of Baljit Singh, which is Mark 'B', which reflects his date of birth to be 12.02.1987. Considering the same, on the date of accident, the age of the deceased is established to be 25 years. Though, it is categoric claim of the claimants that the deceased was indulging in agricultural work, dairy farming and business of selling building material etc., but however, no satisfactory evidence, relating to the same, as such, has come on record. Even though, it is stated that father of the deceased was having 3 acres of land, but however, no revenue record, relating to the same, has come on record.

In any case, in the given circumstances and also considering the educational qualification of the deceased, which is to the minimum matriculation, as per the certificate Mark 'B', coming forth, the earnings of the deceased, by making some guess work, also cannot be considered to be as that of a labourer. Looking at this educational input, in the absence of any material coming forth, sole reliance cannot be placed upon minimum wages Notification, which though, can be a yardstick, but at the same time, it cannot be absolute one to fix the income of the deceased.

Thus, considering the educational qualification, making same guess work, very proximate to the reality, the earnings so taken by learned Tribunal, as Rs.10,000/-, cannot be said to be on higher side. It is just and appropriate amount.

As per ***Pranay Sethi's case***, addition on the count of 'future prospects', considering the age of the deceased, ought to be made to the extent of 40% instead of 50%, as done by learned Tribunal. Making it to be so, the income of the deceased is worked upon as Rs.10000+4000(40%)=Rs.14,000/- per month.

Considering the number of dependents of the deceased, 1/4th is to be deducted, on the count of 'personal expenses' as per ***Sarla Verma's case***, as done by learned Tribunal. Thus, making this deduction, the earnings comes to be Rs.14000-3500=Rs.10,500/- per month, annual whereof, comes to be Rs.1,26,000/-.

To the aforesaid amount, appropriate and suitable multiplier, to

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be applied is '**18**', as applied by learned Tribunal and by applying the same, the loss of dependency, works out to be Rs.126000x18=**Rs.22,68,000/-**.

However, at this juncture, it is pertinent to mention that learned Tribunal had granted compensation to the extent of Rs.1,00,000/- on the count of 'loss of consortium' to the widow of the deceased and Rs.1,00,000/-, on the count of 'loss of care and guidance' to children of the deceased and another amount of Rs.25,000/- on the count of 'funeral expenses'. 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'.

Further, 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 parents of the deceased, are also entitled to 'spousal', 'filial' and 'parental' consortium, on the count of 'loss of consortium' and it was further held that 'loss of love and affection' is comprehended in 'loss of consortium'. Hence, there is no justification to award compensation towards loss of care and guidance, as a separate head.

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.48400x5=**Rs.2,42,000/-** 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 Baljit Singh, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.22,68,000/-**
Loss of consortium	**:**	**Rs.2,42,000/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.25,46,300/-**

However, the amount awarded by learned Tribunal was Rs.26,55,000/-. As such, the amount so awarded, calls for proportionate reduction to the extent of Rs.1,08,700/- (Rs.2655000-Rs.2546300). In the given circumstances, the insurance company is held entitled to recovery of the aforesaid amount of Rs.1,08,700/-, proportionate to the share of claimants, together with interest of each of the claimants, if the compensation is already disbursed. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, the appeal filed by the insurance company i.e. **FAO-4097-2014** stands allowed, whereas, appeal filed by the appellants-claimants i.e. **FAO-5999-2015**, stands dismissed.

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

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