2024:PHHC:059415

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-3773-2015 (O&M)

The Oriental Insurance Company Ltd.

...Appellant

VERSUS

Kuldip Singh and others

...Respondents

(ii) FAO-7769-2015 (O&M)

Kuldip Singh and others

...Appellants

VERSUS

Baljit Singh and others

...Respondents

Date of Decision: April 30, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Amit Jaiswal, Advocate
for the appellant (in FAO-3773-2015) and
for respondent No.3. (in FAO-7769-2015).

Ms.Ekta Thakur, Advocate
for appellants (in FAO-7769-2015) and
for respondents No.1 to 4 (in FAO-3773-2015).

None for respondents No.5 and 6 (in FAO-3773-2015).

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ARCHANA PURI, J.

These are two appeals filed to assail the Award dated 29.01.2015 passed by Motor Accident Claims Tribunal, on account of death of Usha Rani, in a motor vehicular accident, which took place on

03.10.2013.

FAO-3773-2015 has been filed by the insurance company to assail the factum and manner of taking place of the accident and also took the plea of contributory negligence as well as challenged the liability, so fastened.

FAO-7769-2015 has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation awarded by learned Tribunal.

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

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

That, on 03.10.2013, at about 8.00 a.m., Usha Rani was going near House No.13, Sector-15, Chandigarh, on her correct left side, for school on foot. In the meantime, truck bearing registration No.PB-65K-9920, being driven by its driver-Baljit Singh @ Ladi, in a rash and negligent manner and at a very high speed, struck Usha Rani from behind and front tyre crushed Usha Rani. She was taken to PGI, Chandigarh, but however, multiple injuries suffered by her, proved fatal. The accident had taken place, due to rash and negligent driving of the aforesaid offending truck by Baljit Singh @ Ladi.

It is the pleaded case of the claimants that Usha Rani was 40 years old and was a housewife, as well as Anganwari worker in Government School, Sector-15, Chandigarh and earning Rs.7,000/- per month and all the claimants were dependent upon the deceased.

However, respondent No.1-Baljit Singh @ Ladi, did not make appearance and as such, he was proceeded against ex-parte. Respondent No.2-Inderjit Singh, owner of the truck, had taken the plea that truck bearing registration No.PB-65K-9920, was falsely implicated in the present case and false FIR was got registered. Likewise, respondent No.3-insurance company, in reply, had taken the plea that alleged accident was never caused by the offending truck and respondent No.1 was not rash and negligent, while driving the truck. The alleged accident was caused due to deceased herself, who was crossing the road negligently and without seeing the vehicle plying on the road. Moreover, also plea was taken that the driver of the offending truck, was not holding a valid and effective driving licence, at the time of alleged accident.

To substantiate the factum and manner of the accident, claimant No.2-Manjit Kaur, who is daughter of the deceased, categorically deposed about relationship of the claimants with the deceased and furthermore, about accompanying her mother Usha Rani, at the relevant time of the accident on 03.10.2013. Furthermore, she has categorically deposed that Usha Rani was on her correct left side of the road and was proceeding for school on foot. In the meanwhile, the truck bearing registration No.PB-65K-9920, driven by respondent No.1-Baljit Singh @ Ladi, in a rash and negligent driving and at a very high speed, came and struck her mother from behind and front tyre of the said truck had crushed her. She categorically imputed rashness and negligence, on the part of respondent No.1-Baljit Singh @ Ladi. Besides the same, post-mortem report of the deceased is Ex.P2. Even though, suggestion was given to the aforesaid witness, in the cross-examination, about false implication of respondent No.1 and involvement of the truck, but however, she categorically denied about the same. Furthermore, she had also got registered the FIR, wherein, same manner of accident had been stated.

However, to rebut the aforesaid evidence, there is no satisfactory evidence, coming a the instance of the respondents. In fact, respondent No.1-Baljit Singh @ Ladi, who, in the capacity of being driver, could have been best person, to depose about the non-involvement of the truck in question in the alleged accident and furthermore, if the accident had taken place, then to depose about the contributory negligence, to be there, on the part of the deceased. However, he had chosen to remain away from the proceedings and was proceeded against ex-parte. Even though, the insurance company took the plea of contributory negligence, but however, no evidence, as such, has been led, to substantiate this plea. Even, respondent No.1, could have been summoned as a witness but not done so.

In the given circumstances, learned Tribunal had appropriately concluded about the accident to have taken place, due to rash and negligent driving of the offending truck by respondent No.1-Baljit Singh @ Ladi, and the same resulted into multiple injuries, on the person of Usha Rani, which proved fatal. Accordingly, the findings so recorded, are hereby affirmed.

Now, coming to the extent of compensation to be granted to the claimants.

Learned Tribunal had taken the monthly earnings of the deceased as Rs.6,500/- and while taking it to be so, addition of 30% was made, on the count of 'future prospects' and earnings were taken to be Rs.8,450/- per month. 1/3rd, out of the same was deducted, on the account of 'personal expenses' of the deceased, which comes to be Rs.2816/-. The residue income comes to be Rs.5634/-. After applying the multiplier of '15', the loss of dependency was worked upon as Rs.10,14,120/-. Besides the same, Rs.1 lakh was awarded on the count of 'loss of consortium' and another sum of Rs.25,000/- was given towards 'funeral expenses' and 'last rites'. Thus, the total compensation awarded by learned Tribunal was Rs.11,39,120/-.

However, the compensation, so worked upon, as per prevalent law, calls for intervention by this Court.

It is now assiduously submitted by learned counsel for the insurance company that learned Tribunal had taken the earnings of the deceased on higher side. However, the aforesaid submission is not tenable.

Even though, it was pleaded case of the claimants that the deceased was working as Anganwari worker in Government School, Sector-15, Chandigarh and was earning Rs.7,000/- per month, but however, no satisfactory evidence, has come on record, about this source of livelihood followed by the deceased and the extent of her earnings. But anyhow, the fact remains that the deceased was a homemaker. In the given circumstances, the earnings of the deceased, has to be worked upon, as a homemaker.

It has to be kept in mind that amount of compensation worked upon, should be just. The statutory provisions of the Motor Vehicle Act, which is benevolent piece of legislation, clearly indicate that the compensation must be just and it cannot be bonanza, nor a source of profit, but the same should not be pittance also. The Courts are expected to have realistic approach and also have the duty to weigh various factors, to quantify the amount of compensation, which should be '**just**'. Every method or mode adopted for assessing the compensation, has to be considered, in the background of 'just' compensation, which is pivotal consideration. It is pertinent to mention that while considering the case of grant of compensation, on account of death of a homemaker, in a motor vehicular accident, it has to be seen that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The Court, as such, cannot overlook the gratuitous services rendered by the wife, with true love and affection, to her children and her husband and managing the household affairs, which in itself, cannot be equated with the services rendered by any other person. There cannot be any fixed approach to assess the notional income of a homemaker, but however, the Court has to make approximate economic value for all the work that a homemaker, in routine do, while looking after the home and family. Thus, the facts and circumstances of each case, as such, has to be taken into consideration.

It is pertinent to mention that learned counsel for the insurance company has further assiduously submitted that the deceased Usha Rani was 42 years of age and erroneously, she had been considered to be of 40 years of age. However, it is the categoric claim of the claimants that deceased Usha Rani was 40 years of age. Even, Manjit Kaur, daughter of deceased, herself has stepped into witness box as PW-1 and she categorically deposed about deceased to be 40 years old. This witness was subjected to cross-examination, but nothing material, came forth to dislodge the version of the claimants, qua age of deceased Usha Rani. No cross-examination, on this aspect has been conducted. In fact, at the instance of respondent No.3, there is not even a suggestion, relating to the age of the deceased to be 42 years, has been given. In the given circumstances, as compared to the recitals of the post-mortem report, the testimony of daughter of the deceased, ought to be given more weightage and learned Tribunal had appropriately considered the age of the deceased to be 40 years.

In the present case, the claimants are the husband and three children of the deceased. The children are of such age, when there is utmost necessity for a mother to look after them and guide them and to train them to face life, in future. The kind of strata to which the deceased belonged, it is quite obvious that she must be performing multifarious duties, while looking after the house. Considering all the aforesaid aspects, the monthly income of the deceased, as taken by learned Tribunal to be Rs.6,500/-, is most just and reasonable, which calls for no further intervention by this Court.

However, addition of 30%, on the count of ‘future prospects, in on higher side. As per ***Pranay Sethi’s case***, keeping in view the age of the deceased, addition has to be to extent of 25%. While making it be so, the earnings of the deceased comes to be Rs.6500+1625=Rs.8125/-. Learned Tribunal had erroneously made deduction to the extent of 1/3rd, on account of ‘personal expenses’, whereas, looking at the number of dependents, 1/4th ought to be deducted. While making this deduction, the monthly dependency comes to be Rs.8125-2031=Rs.6094/-, annual whereof, comes to be Rs.73,128/-.

Considering the age of the deceased, as per ***Sarla Verma’s case***

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‘15’ is the appropriate and suitable multiplier, as applied by learned Tribunal and while applying the same, the loss of dependency comes to be Rs.73128x15=**Rs.10,96,920/-**.

Even though, learned Tribunal had granted of Rs.1 lakh, on the count of ‘loss of consortium’ and Rs.25,000, on the count of ‘funeral and last rites’, but however, as per ***Pranay Sethi's case (supra)***, at present, it is the amount of Rs.48,400/-, on the count of ‘loss of consortium’, which is payable to each of the dependents, either under ‘parental’, ‘spousal’ or ‘filial’ consortium, which comes to be Rs.48400x4=**Rs.1,93,600/-**. On the similar pattern, on the counts of ‘loss of estate’ and ‘funeral expenses’, the compensation payable, is to the extent of **Rs.18,150/-,** on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Usha Rani, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.10,96,920 /-**
Loss of consortium	**:**	**Rs.1,93,600/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.13,26,820/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.13,26,820-11,39,120=Rs.1,87,700/-**.

Proceeding further, learned counsel for the insurance company has assiduously submitted that liability has been erroneously fastened upon the insurance company, as respondent No.1-Baljit Singh @ Ladi was not holding valid and effective driving licence, at the time of accident in question. However, the submission, so made, is not tenable.

Specific issue was framed by learned Tribunal, vis-a-vis, driver of the offending vehicle not holding valid and effective driving licence, at the time of accident. Onus to prove this issue was upon the insurance company. However, no evidence, as such, has been led by the insurance company, to substantiate this issue. In this regard, suffice to make mention that owner of the offending vehicle, namely Inderjit Singh, had stepped into witness box as RW-1. He has categorically deposed that Baljit Singh @ Ladi was the driver and he had shown the driving licence to him and it was found to be genuine and valid driving licence, but he cannot produced the same, as driver Baljit Singh @ Ladi had left the job, after the alleged accident and he was not working with him. In cross-examination, he had categorically stated that he had employed Baljit Singh @ Ladi as driver in the year 2012 and while engaging him, he had seen his driving licence, which seemed to be genuine, but he had not retained the copy of the same. Furthermore, he had stated in the cross-examination that he had also taken driving test, before employing Baljit Singh @ Ladi, as a driver with him.

Thus, it stands established that the owner had taken sufficient caution before employing Baljit Singh @ Ladi, as driver. The insurance company would have summoned Baljit Singh @ Ladi, on whose testimony, things would have been straightened, vis-a-vis, holding of the driving licence, but however, no such steps have been taken, at the instance of the insurance company. In the given circumstances, the insurance company has been appropriately held to have failed to prove the issue in question.

In the light of the aforesaid discussion, the appeal filed at the instance of the insurance company i.e. **FAO-3773-2015**, as such, is hereby dismissed. However, the appeal filed at the instance of the appellants-claimants i.e. **FAO-7769-2015** is hereby allowed.

Out of the differential amount i.e. **Rs.1,87,700/-**, appellants-claimants No.2 to 4 are held entitled to Rs.35,000/- each, whereas, appellant-claimant No.1 is held entitled to residue amount of Rs.82,700/-. On the aforesaid differential amount, 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, shall remain the same.

April 30, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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