2024:PHHC:019858

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-6289-2013 (O&M)

Asha Sharma and another

...Appellants

VERSUS

Baljit Singh and others

...Respondents

(ii) FAO-827-2014 (O&M)

Reliance General Insurance Company

...Appellant

VERSUS

Asha Sharma and others

...Respondents

Date of Decision: February 07, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Khushagra Mahajan, Advocate
for the appellants (in FAO-6289-2013) and
for respondents No.1 and 2 (in FAO-827-2014).

Mr.R.K.Bashamboo, Advocate
for respondent No.2 (in FAO-6289-2013) and
for the appellant (in FAO-827-2014).

****

ARCHANA PURI, J.

These are two rival appeals filed by the appellants-claimants as well as insurance company, thereby, assailing the Award dated 27.09.2013, on the quantum of compensation, as granted by learned Tribunal, on account of death of Joginder Pal Sharma, in a motor vehicular accident, which took place on 06.10.2012.

FAO-6289-2013 has been filed by the appellants-claimants for seeking enhancement of the compensation, whereas FAO-827-2014 has been filed by the insurance company, thereby, challenging the quantum of compensation, as granted by learned Tribunal.

On appraisal of the evidence, adduced on record, learned Tribunal had assessed the earnings of deceased Joginder Pal Sharma, on the basis of the income tax returns, after deduction of income tax as Rs.2,66,770/-, per annum, who was stated to be working as Accountant. Considering the number of claimants-dependents, deduction to the extent of 1/3rd was made, on the count of 'personal expenses' and the loss of dependency was worked upon as Rs.1,77,846/-. While considering the age of the deceased to be 55 years, multiplier applied was '11' and the compensation was worked upon as Rs.19,56,306/-. Apart from it, learned Tribunal had granted a sum of Rs.5,000/- on the count of 'funeral expenses' and another amount of Rs.5,000/- on the count of 'loss of estate'. Besides the same, claimant No.1-widow of the deceased was held entitled to Rs.10,000/-, on the count of 'loss of consortium'. As such, total compensation payable was worked upon as Rs.19,76,306/-. Further, the liability of the respondents were held to be joint and several.

Feeling aggrieved by the compensation, so granted, the insurance company as well as the appellants-claimants had filed the rival appeals, detail whereof, has been given aforesaid. The insurance company has filed the appeal for seeking reduction of the compensation, whereas, appellants-claimants have filed the appeal for seeking enhancement of the compensation.

While making reference to the evidence adduced, before learned Tribunal, at the very outset, learned counsel for the insurance company has submitted that learned Tribunal has not appraised the evidence, coming on record, in correct perspective and had erroneously, relied upon the income tax return Annexure AX3, which related to the year 2012-13, as the same was filed after the death of Joginder Pal Sharma and therefore, reflected the inflated earnings of the deceased. Besides the same, also it is submitted that claimant No.2 is a grown up son, who is not dependent upon the deceased and therefore, he is not entitled to any compensation and that being so, the widow of the deceased is the sole dependent to be considered and therefore, the deduction, on the count of 'personal expenses', ought to be 1/2. Also, it is submitted that deceased has been erroneously considered to be aged 55 years. However, as per the date of birth to be 02.06.1954, as reflected in income tax returns, the deceased was 58 years, at the relevant time. In view of the same, it is submitted that the appropriate multiplier to be applied is '9', instead of '11', as applied by learned Tribunal. In the light of the same, learned counsel for the insurance company submitted that the compensation amount, ought to be reduced.

Per contra, learned counsel for the claimants has refuted the claim of the insurance company. It is submitted that the evidence has been appraised by learned Tribunal, in the correct perspective. Learned Tribunal had appropriately considered the income tax return Ex.AX3, as it related to assessment year 2012-13. Nothing, as such, is coming on record to establish about the inflated earnings, having depicted in the said income tax return.

Learned counsel for the claimants further submits that on the count of 'future prospects' also, addition ought to be made, in view of the age of the deceased and further, enhancement is also called for, under the conventional heads. As such, learned counsel for the appellants-claimants made a prayer for enhancement of the compensation, as granted by learned Tribunal.

Before proceeding further, at the very outset, it is pertinent to reiterate the concept of 'just' compensation under Section 168 of the ibid Act. It is settled proposition, now through the catena of decisions, including the one, rendered by the Constitution Bench in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact dependent exercise, which must be liberal and not parsimonious. It should always be kept in mind that the Motor Vehicle Act of 1988 is a beneficial and welfare legislation, that seeks to provide compensation, as per the contemporaneous position of an individual, which should essentially be forward looking. It must be emphasized that compensation is a more comprehensive form of pecuniary relief, which involves broad-based approach, keeping in view the purpose of providing stability and continuity in peoples' life, in the future.

In view of the above-mentioned principle, now let us advert to the facts of the case in hand.

It is categoric claim of the appellants-claimants that deceased Joginder Pal Sharma was 54 years old and was working as Accountant with Kapoor Automobiles India Private Limited and he was also working with S.S.Sharma Traders. His earnings were asserted to be Rs.25,000/- per month. To so substantiate, Asha Sharma, widow of deceased, stepped into witness box as PW-1 and reiterated her version, with regard to the vocation of the deceased and extent of his earnings. Likewise, PW-2 Deepak Sharma, son of the deceased also, in his affidavit Ex.PW2/A, has reiterated the version, with regard to the vocation, followed by his father and the extent of his earnings.

Furthermore, PW-5 Pravin Joshi, Tax Assistant, official of the Income Tax Department has been examined, who proved the income tax return for the years 2010-11 and 2011-12 of Joginder Pal Sharma, which are Ex.AX1 and Ex.AX2. The income tax return along with composition of income was also tendered into evidence, which is Ex.AX3. It should be noticed that learned Tribunal had placed reliance upon income tax return for the year 2011-12, assessment year 2012-13, whereby, the gross-income of Joginder Pal Sharma was shown as Rs.2,72,235/- and the tax payable payable on the said income was Rs.5465/- and net income, as such, was taken to be Rs.2,66,770/- and thereupon, after making deduction of 1/3rd, multiplier of '11' was applied and the compensation was worked upon as Rs.19,56,306/-, besides granting compensation to the extent of Rs.5,000/- each, on the counts of 'funeral expenses' and 'loss of estate' and another amount of Rs.10,000/- to claimant No.1-widow, on the count of 'loss of consortium'. The total compensation was worked upon as Rs.19,76,306/-.

Income tax return, of course, is reliable evidence, which ought to be taken into consideration. It has been appropriately pointed by learned counsel for the insurance company that Ex.AX3, which is income tax return for the assessment year 2012-13, has been filed, after the death of Joginder

Pal Sharma, though, it related to the previous year, but it has been filed on 22.02.2013, as per endorsement made upon Ex.AX3. Since, the same had been filed after death of Joginder Pal Sharma, therefore, the same reflecting inflated earnings, as such, cannot be ruled out. In the given circumstances, it is always appropriate to consider the income tax return, which had been filed, soon before the death of income tax payee, which is Ex.AX1, which ought to be taken into consideration. Ex.AX2 is relating to assessment year 2011-12. Though, it bears the endorsement of income tax return, but however, it does not give the complete particulars of the income and the earning and no supportive document, relating to the same, as such, has come on record. In the given circumstances, it shall be appropriate to consider the return for the assessment year 2010-11. It shows about the income chargeable under the salaries to be Rs.1,22,400/-. Income from other sources has been mentioned as Rs.1,41,567/- and gross total income has been worked upon as Rs.2,63,967/-. Thus, while taking the annual income of the deceased to be Rs.2,63,967/-, the compensation, so granted by learned Tribunal, is required to be re-computated.

At the very outset, it is pertinent to mention that learned counsel for the insurance company has resisted the claim, for grant of compensation, to son of the deceased, namely Deepak Sharma, who is claimant No.2. Deepak Sharma has been granted compensation along with widow of the deceased. No doubt, Deepak Sharma, is major son of the deceased, but however, simply on the score of being major son, he cannot be deprived of the compensation. Very true, as so pointed out, PW-2 Deepak Sharma, while facing cross-examination, had stated that he also works as Accountant, meaning thereby, he was also an earning hand.

However, it should be noted that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service. Thus, dependency is a relevant criteria to claim compensation for loss of dependency. Dependency not necessarily means financial only, it also includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Considering the same, even though, the deceased may not be rendering financial assistance to his son, but however, emotional and psychological dependency upon the deceased, by his son, as such, ought to be there and considering the same, son also ought to be paid the compensation.

As per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, salary minus tax is to be taken into consideration to work upon the compensation. In the tax slab existing, at the relevant time, there was no tax upto the income of Rs.1,60,000/-. For succeeding income from Rs.1,60,000/- to Rs.5,00,000/-, it was 10% of the amount, exceeding Rs.1,60,000/-. As already observed, the annual earnings of the deceased are taken to be Rs.2,63,967/-. Thus, from the amount of Rs.1,60,000/- to Rs.2,63,967/-, the taxable income comes to be Rs.1,03,967/- and the tax upon the same comes to be Rs.103967x10%=Rs.10,396/-. After deducting the aforesaid tax, the extent of annual earnings, as such, comes to be **Rs.263967-10396=Rs.2,53,571/-**.

Very close to the same, it should be noted that deceased was asserted to be about 54 years and learned Tribunal had assessed his age to be 55 years. However, in the income tax returns, which have been proved, during the course of evidence, reveals about the date of birth of the deceased to be 02.06.1954. Considering the same, on the date of accident, i.e. 06.10.2012, the deceased was 58 years old. Such being the age of the deceased, the suitable multiplier is also required to be scaled down from ‘11’, as applied by learned Tribunal to ‘9’, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***.

Considering the deceased to be 58 years old, as per ***Pranay Sethi’s case***, addition of 10% ought to be made, on the count of ‘future prospects’. Making it to be so, the income of the deceased is worked upon as Rs.253571+Rs.25357(10%)=**Rs.2,78,928/-**.

Considering the number of dependents of the deceased, as per ***Sarla Verma’s case (supra)***, the deduction to the extent of 1/3rd has to be made, on the count of ‘personal expenses’. Thus, making this deduction, the loss of dependency comes to be Rs.278928-92976(1/3rd)=Rs.1,85,952/-.

Considering the age of the deceased, as per ***Sarla Verma’s case,*** appropriate and suitable multiplier, to be applied is ‘**9**’, as observed aforesaid, and by applying the same, the loss of dependency, works out to be Rs.185952x9= **Rs.16,73,568/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in ***Pranay Sethi's case (supra)***. The concept of consortium, has been dilated in detail in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, and as per the same, the claimants are entitled to compensation, on the loss of consortium, be it ‘parental’, ‘spousal’ or ‘filial’.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, while making addition of 10% under the heads of ‘loss of consortium’, ‘loss of estate’ and ‘funeral expenses’, after every three years, at present, the amount payable, on all the three aforesaid heads, is to the extent of **Rs.48,400/-, Rs.18,150/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to dependents, on account of death of Joginder Pal Sharma, is re-computated, as herein given:-

Loss of dependency	:	**Rs.16,73,568/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.18,06,668/-**

As such, the compensation granted by learned Tribunal is scaled down from **Rs.19,76,306/-** to **Rs.18,06,668/-**. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid terms, the appeal filed by the appellants-claimants i.e. FAO-6289-2013 stands dismissed, whereas, appeal filed by the insurance company i.e. FAO-827-2014 stands allowed.

February 07, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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