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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5891-2016 (O&M)
Date of decision: 30.07.2024

Harjit Kaur and others ...Appellants

Versus

Jawahar Ali and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjeev Goyal, Advocate for the appellants.

Mr. Vinod Chaudhri, Advocate for respondent No.3.

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VIKAS BAHL, J. (ORAL)

1. The widow, three children and mother of the deceased-Kirpal Singh have filed the present appeal for modification of the award dated 21.08.2015 vide which an amount of Rs.14,90,625/- has been awarded in favour of the applicants and the Tribunal had apportioned the said amount in the following manner:-

"25. As a result of the findings on above issues, compensation of Rs.14,90,625/- is awarded in favour of the applicants and against the respondents. They shall also be entitled to interest on the amount of compensation @ 7½% per annum from the date of application till realization. Out of amount of compensation, amount of Rs.1,00,000/- awarded on account of loss of consortium shall be retained by applicant no.1 being widow of the deceased and an amount of Rs.1,00,000/- awarded on account of loss of love, care and guidance shall be apportioned in equal shares between applicants no.2 to 4 and remaining amount of compensation shall be shared by the applicants in the following manner:

(i). Applicant no.1 Harjit Kaur (widow) – 30%

(ii). Applicant no.2 Jaspal Kaur (minor daughter)- 20%
(iii). Applicant no.3 Navjot Kaur (minor daughter)- 20%.
(iv). Applicant no.4 Gurwinder Singh (minor son)-20%
(v). Applicant no.5 Kesro (mother)-10%"

2. Learned counsel for the appellants has submitted that in the present case, the award is required to be suitably enhanced. It is submitted that the total amount given by the Motor Accident Claims Tribunal for loss of love and affection, loss of consortium and funeral expenses is Rs.2,25,000/- whereas total amount under the said heads should have been Rs.2,30,000/- (Rs.40,000/- x 5 = Rs.2,00,000/- for loss of consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate). It is further submitted that the present appellants have been able to lead evidence that the deceased was earning Rs.15,000/- per month which has not been taken into consideration by the Tribunal and the amount on account of minimum wages has been assessed as Rs.6250/- which is on the lower side. It is submitted that the additional amount be awarded along with the rate of interest @ 7.5% per annum from the date of filing the claim petition till its realisation. Learned counsel for the appellants in support of his arguments has relied upon the law laid down by the Hon'ble Supreme Court in case titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported as ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***.

3. Learned counsel for respondent No.3 has submitted that the

Motor Accident Claims Tribunal had awarded 50% on account of future prospects whereas since the age of the deceased was 38 years as per the finding of the Tribunal thus, future prospects of only 40% was required to be awarded. It is argued that the salary which is sought to be claimed as Rs.15,000/- per month is highly excessive and the said aspect is not proved on record.

4. Learned counsel for the appellants, in rebuttal, has submitted that at any rate, since it has come on record that the deceased was doing welding work thus, he should be considered as a semi skilled worker and Rs.7650/- per month which was the minimum rate at the relevant time with respect to semi skilled workers should be awarded. He has given a revised chart, a copy of which is reproduced hereinbelow:-

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Deceased-Kripal Singh

Income is Rs.7650/- P.M. x 12 (semi skilled)	*Rs.91,800/- per annum*
Future Prospects 40%	*Rs.36,720/-*
Total	*Rs.1,28,520/-*
Deduction 1/4th	*Rs.32,130/-*
	Rs.96,390
Multiplier x 15	*Rs.14,45,850/- (Rs.96,390/- x 15)*
Loss of love and affection and consortium	*Rs.2,00,000/- (Rs.40,000/- x 5)*
Funeral expenses	*Rs.15,000/-*
Loss of estate	*Rs.15,000/-*
	Rs.16,75,850/-
Awarded by Tribunal	*Rs.14,90,625/-*
Net Increase	*Rs.1,85,225/-*

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. Hon'ble the Supreme Court in para 42 of ***Sarla Verma's case*** (Supra) had observed as under:-

> *"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years,* ***M-15 for 36 to 40 years****, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

7. A perusal of the above would show that for the age of 38 years, multiplier of 15 is to be applied.

8. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra), has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
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> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
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> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *59.3 While determining the income, an addition of 50% of*

actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. *An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

60. The reference is answered accordingly. Matters be placed before the appropriate Bench."

9. A perusal of the above judgment would show that it was

observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which required to be enhanced at the rate of 10% in every three years.

10. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium, children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
>
> *21.1 Spousal consortium is generally defined as rights*

pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society,co-operation, affection, and aid of the other in every conjugal relation."

21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count 5.

However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

11. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

12. The revised chart produced by the learned counsel for the appellants takes into consideration the objection raised by respondent No.3 to the effect that the future prospects of only 40% should have been awarded instead of 50% as has been awarded by the Motor Accident Claims Tribunal. Total amount on account of loss of consortium, funeral expenses and loss of estate has also been mentioned in the revised chart in accordance with law.

13. The only question left is with respect to the amount that has to be awarded on account of salary. A perusal of para 1 of the award would show that it was averred in the application that the deceased was doing welding work at Mittal Cycle Industries. The factum of the deceased working as a Welder in Mittal Cycle Industries was also mentioned in FIR No.2 dated 07.01.2015. Harjit Kaur who is the widow of the deceased has been examined as AW1 and has reiterated the fact that the deceased was

working as a Welder. AW4-Deepak Jain, who is stated to be the employer, has also been stated to be examined and he has stated in his evidence that the deceased was working as a Welder at Mittal Cycle Industries. Although, there is no document to show that the deceased was earning Rs.15,000/- but from the evidence on record, it could be ascertained that he was working as a Welder and thus, the argument raised by the learned counsel for the appellants to the effect that the deceased should be treated as a semi skilled labour and should be awarded a salary of Rs.7650/- per month, being the minimum wages with respect to semi skilled workers at the relevant time, deserves to be accepted. With respect to rate of interest, this Court is consistently awarding the rate of interest at the rate of 7.5% per annum, which is also reasonable in the present case.

14. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award dated 21.08.2015 is modified and respondent No.3 is directed to pay the additional amount of compensation of Rs.1,85,225/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

30.07.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**