IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6036-2016 (O&M)
Date of Decision: January 16, 2024

Sonia

...Appellant

VERSUS

Baldev Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Munish Kumar Garg, Advocate
for the appellant.

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

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ARCHANA PURI, J.

The present appeal has been filed by the appellant-respondent No.4, thereby, seeking enhancement of the compensation awarded by learned Tribunal, on account of death of Kapil Dev, in a motor vehicular accident.

The essential facts, to be noticed, are as herein given:-

That, on 30.12.2014, Kapil Dev, while driving motorcycle bearing registration No.HR-08L-1706 along with Manoj, as pillion rider, was proceeding from Kaithal side and turned towards Narwana side. In the meantime, a truck bearing registration No.PB-23G-7505, being driven by respondent No.1-Baldev Singh, in rash and negligent manner, at a very high speed, came from Kaithal side and struck against the motorcycle from behind, while going on wrong side. As a result of this accident, both the occupants of the motorcycle had sustained multiple serious and grievous injuries, which proved fatal.

Two claim petitions were filed, vis-a-vis death of Kapil Dev as well as Manoj and the same were disposed of, vide consolidated Award dated 06.01.2016.

With regard to death of Kapil Dev, learned Tribunal had dismissed the claim petition, qua married sisters of the deceased and had granted the compensation to the extent of Rs.17,25,000/-, in favour of parents, minor daughter and widow-Sonia, who was impleaded as respondent No.4, in the claim petition. From the aforesaid amount, Rs.11,25,000/- was granted to minor daughter Mahak, whereas, parents i.e. both mother and father, as well as widow-Sonia, were granted Rs.2 lakh each. The driver, owner and insurer of the offending truck, were held jointly and severally liable, to pay the compensation.

Being dissatisfied with the extent of compensation, so granted, appellant-respondent No.4, namely Sonia, has filed the present appeal, for seeking enhancement.

Be it noted that, no appeal, as such, has been filed by any of the respondents, upon whom, the liability was fastened.

Learned counsel for the parties heard.

While making reference to the evidence, adduced before learned Tribunal, it has been submitted that compensation has been worked upon miserably on a lower side, which calls for extensive enhancement on various counts, to which, amiss has been given by learned Tribunal.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellant and he submits that on the basis of the evidence adduced, the compensation worked upon by learned Tribunal, is just and reasonable and therefore, appeal should be dismissed.

It is pertinent to mention that on the basis of the evidence, adduced, learned Tribunal had taken the earnings of the deceased as Rs.10,000/- per month and after making deduction to the extent of 1/4th, in view of the number of dependents, the dependency was worked upon as Rs.7500/- per month. Considering the age of the deceased as 28 years, multiplier of '17' was applied and total dependency was worked upon as Rs.15,30,000/-. Besides the same, Rs.20,000/- was granted to the claimants, towards last rites and transportation. Further, an amount of Rs.1 lakh was granted towards 'loss of love and affection' and Rs.75,000/- was granted to widow-respondent No.4, towards 'consortium'. In total, a sum of Rs.17,25,000/- was granted.

However, the compensation, so worked upon, calls for re-computation, as per settled prevalent law.

So far as, the earnings of deceased are concerned, as per salary statement Ex.PW5/A and salary certificate Ex.PW5/B, the same has been appropriately taken as Rs.10,000/- per month. However, considering the age of the deceased to be 28 years, as per ***Pranay Sethi's case***, addition on the count of 'future prospects' has to be made, which comes to be Rs.4,000/-. Thus, the total earnings of the deceased is taken as Rs.14,000/- per month.

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Considering the number of dependents of the deceased, as per *Sarla Verma's case*, the deduction to the extent of 1/4th has to be made, on the count of 'personal expenses'. Thus, making this deduction of 1/4th, the loss of dependency comes to be Rs.14000-3500(1/4th)=Rs.10,500/-, annual whereof, comes to be Rs.10500x12=Rs.1,26,000/-.

Considering the age of the deceased, as per *Sarla Verma's case,* appropriate and suitable multiplier, to be applied is '**17**', as applied by learned Tribunal and by applying the same, the loss of dependency, works out to be Rs.126000x17= **Rs.21,42,000/-**.

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)*. It is pertinent to mention that learned Tribunal had granted Rs.1 lakh to the claimants, towards 'love and affection'. However, in *'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'*, the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium. 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 love and affection, as a separate head.

In consonance with the observations made in *Pranay Sethi's case (supra)*, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77 count of '**loss of consortium**' comes to be **Rs.48,400/-** to the appellant/respondent No.1, as well as parents and the minor daughter and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	**Rs.21,42,000/-**
Loss of consortium	:	**Rs.1,93,600/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.23,71,900/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.2371900-1725000=Rs.6,46,900/-**.

Even though, the remaining claimants i.e. parents and minor daughter, had not filed any appeal for enhancement, but however, even in appeal filed under Section 173 of the Motor Vehicles Act, 1988, the normal rules which apply to appeals before the High Court are applicable to such an appeal. It is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto, in order to exercise that power effectively. Even, a bare reading of Section 173 of the Act, also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law.

Considering the same and also the provisions of Order 41 Rule 33, which empowers the appellate court, not only to give or refuse relief to the appellant, by allowing or dismissing the appeal, but also to give such other relief to any of the respondent as "the case may require", there is, therefore, no impediment in law, for grant of enhanced amount, even to the claimants i.e. parents and minor daughter of the deceased, who had not filed any separate appeal.

In the given circumstances, out of the enhanced amount of Rs.6,46,900/-, a sum of **Rs.1 lakh** each, is granted to parents of the deceased and appellant-Sonia, widow of the deceased and the residue amount of **Rs.3,46,900/-** is granted to Mahak-minor daughter of the deceased. On the enhanced amount of the compensation i.e. **Rs.6,46,900/-**, the appellant-Sonia, as well as 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, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid terms, the present appeal stands allowed.

January 16, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**