2024:PHHC:117380

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-9756-2014 (O&M)
Date of Decision: September 06, 2024

Devahuti and others

...Appellants

VERSUS

Bhupinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.J.S.Cooner, Advocate
for the appellants.

Mr.N.K.Manchanda, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants to assail the contributory negligence to the extent of 40%, fastened upon the deceased as well as questioning the adequacy of the compensation, awarded by learned Motor Accident Claims Tribunal, on account of death of Rajender Parsad, in a motor vehicular accident, which took place on 04.09.2013.

At the very outset, be it noted that none of the respondents i.e. driver, owner and insurer, who have been fastened with the liability to pay compensation, have filed any appeal.

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

That, on 04.09.2013, Rajender Parsad was going to his home, on his

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motorcycle bearing registration No.HR-01Y-3181, at normal speed, after discharging his duties from Govt. School (Elementary) village Langar Chhani. When, he turned his motorcycle towards Bihta Road, after crossing railway gate of Kesari, in the meantime, bus bearing registration No.HR-37C-2788, came from the opposite side, at full speed, rashly and negligently and without blowing horn, on the wrong side and directly hit the motorcycle of Rajender Parsad, from the driver side, as a result whereof, Rajender Parsad, fell on the road and received injuries. The accident was witnessed by Hitesh, son of Rajender Parsad, who was following Rajender Parsad, on the motorcycle of his friend. The injured was taken to Civil Hospital, Ambala Cantt, where, he was declared dead. FIR No.141 dated 04.09.2013 under Sections 279, 304-A IPC was registered at Police Station Ambala, Saha against respondent No.1.

Claimants, who are widow as well as daughter and son of the deceased, thereby, asserting themselves to be dependent upon the deceased, filed the claim petition for seeking compensation.

In pursuance of the notice issued, respondents No.1 in reply raised preliminary objection, thereby, asserting about claim petition to be false and frivolous and that amount of compensation claimed is highly exaggerated. On merits, respondent No.1-driver denied the material averments and pleaded that no accident took place and he and the offending vehicle, has been falsely implicated, in the criminal case, by lodging a false report, with ulterior motive to claim compensation. The offending vehicle was not involved in any accident and that the petition has been filed, on the basis of the concocted story. Respondent No.2-owner of the offending

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vehicle, in his separate written statement, had taken preliminary objections, vis-a-vis, maintainability, locus standi and suppression of true facts and lodging of false FIR against respondent No.1, at the instance of the claimants, in collusion with the police, with a view to get the compensation. On merits, taking place of the accident, with the offending vehicle, driven by respondent No.1, as such, had been denied and false FIR was alleged to have been got registered against respondent No.1 by the police, in connivance with the claimants.

Respondent No.3-insurance company, in its separate written statement, raised various preliminary objections, about the claim petition to be misconceived and that no accident had taken place and that the petition has been filed in collusion with respondents No.1 and 2, to extract compensation. Also, the insurance company took the plea about respondent No.1, to be not having valid and effective driving licence, at the time of accident and also took the plea that deceased had suffered injuries and death, due to slipping down from the motorcycle, as he abruptly came on the main road, while taking a turn, at a high speed, rashly and negligently and without caring rules and traffic on the road. Even, the extent of earnings of the deceased, as such, was disputed.

On the basis of the pleadings, issues were framed and evidence was adduced by the respective parties.

When the case was at the stage of recording of the evidence of the respondents, none had made appearance, on behalf of respondent No.2-owner and he was proceeded against ex-parte. Respondent No.1-Bhupinder Singh, himself stepped into witness box as RW-1. Respondent No.3-

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insurance company tendered into evidence, rukka Ex.R1 and certified copy of insurance policy Ex.R3 and closed the evidence.

On appraisal of the evidence brought on record, learned Tribunal concluded about vehicle bearing registration No.HR-37C-2788, to be involved in the accident and also concluded about said accident to be the result of contributory negligence, in the ratio of 60:40, of respondent No.1 (driver) and deceased Rajender Parsad.

In the light of the aforesaid conclusion, it was held by learned Tribunal had deceased Rajender Parsad was 51 years, at the time of accident and he was serving in Govt. Middle (Elementary) School, at village Langar Chhani, District Ambala and was drawing salary of Rs.51,135/- per month. Furthermore, it was also held that since the deceased was Government employee, the benefit of last drawn salary by the deceased, given to claimant No.1, widow of the deceased, by the Government of Haryana, ought to be taken into consideration and taking the same into consideration, learned Tribunal held that the claimants will continue to receive full salary, till the age of retirement of deceased Rajender Parsad i.e. 58 years and thereafter, they will get pensionary benefits and while considering the earnings of the deceased as Rs.51,135/- per month, as gross salary, at the age of his superannuation, considered his pension to be Rs.25,567.50, which was rounded off as Rs.25,600/-, the annual whereof, was worked upon as Rs.3,07,200/-. After making deduction of 'personal expenses', to the extent of 1/3rd, the loss of dependency was taken was Rs.2,04,800/-.

However, on the basis of the deceased also having been held to have contributed towards taking place of the accident, 40% deduction was made

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out of Rs.2,04,800/- and the residue was taken as Rs.1,22,880/-. Considering the same and taking notional age of the deceased as 58 years, multiplier of '9' was applied. Thus, the compensation was worked upon as Rs.11,05,920/-, which was rounded off to Rs.11,06,000/-. Besides the same, Rs.1 lakh was granted, on the count of 'loss of consortium' and another amount of Rs.25,000/- was granted towards 'funeral expenses. Thereupon, the compensation was granted under various heads. Besides the aforesaid, on the count of 'love and affection', an amount of Rs.25,000/- each was granted to the children of the deceased, who are claimants No.2 and 3. Thus, the total compensation of Rs.12,81,000/- was granted.

However, the work on of the compensation aforesaid, is erroneous and do call for re-computation.

Firstly, let us consider the aspect of contributory negligence. The fact of accident, as such, stands established from the evidence, brought on record. However, it is categoric claim of the appellants-claimants that the accident had taken place on account of rash and negligent driving of bus bearing registration No.HR-37C-2788. Hitesh son of deceased, who is an eye witness to the accident, has stepped into witness box as PW-4 and in his affidavit Ex.PW4/A, he has categorically deposed thereby, imputing rashness and negligence, on the part of the offending bus, which came from opposite side and had directly hit the motorcycle of his father, as a result whereof, he had sustained injuries and succumbed to his injuries, caused in the accident in question. Besides the aforesaid witness, PW-3 Arun Sharma was examined, who brought the record of summoned file, relating to FIR No.141 dated 04.09.2013 and he proved the copy of FIR, crime detail form

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and post-mortem report, which are Ex.P3 to P5.

To counter the aforesaid evidence, respondent No.1-Bhupinder Singh stepped into witness box as RW-1 and he had stated that on 04.09.2013, while he was going to village Kesari, to park his bus, bearing registration No.HR-37C-2788, while driving it cautiously and at a very slow speed and on the extreme left hand of the road and when he reached just near the Kewari railway crossing, a motorcyclist came from opposite direction, while driving the motorcycle rashly and negligently, while talking on mobile phone. All of a sudden, the motorcyclist lost control and fell on the road, by coming on the extreme wrong side of the road and hit the bus, near the conductor portion.

Considering the aforesaid evidence, learned Tribunal placed reliance upon the site plan Ex.P4 and concluded that the bus came from the opposite side and also considering the testimony of RW-1 Bhupinder Singh, learned Tribunal concluded that the accident had not taken place, on account of sole negligence on the part of respondent No.1, but the deceased also contributed in causing the accident, while taking the turn negligently, at railway crossing and as a result thereof, it was held by learned Tribunal that there was contributory negligence, in the ratio of 60:40, of respondent No.1-Bhupinder Singh (driver) and deceased Rajender Parsad.

However, the conclusion so drawn is palpably wrong. Much reliance has been placed upon site plan Ex.P4, but however, it is pertinent to note that, author of the site plan, the Investigating Officer has not been examined. It is the Ahlmad of the Court, who had brought the record, on the basis thereof, he had proved this site plan of the crime detail form, on the

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record. No such reliance can be placed on this site plan. It is settled law that contributory negligence arises when there has been some act or omission, on the claimant's/victim's part, which has materially contributed to the damage caused. 'Negligence' ordinarily means the failure by a person, to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy, in part, as an author of his own wrong. No such evidence, relating to the same, has come on record, except statement of RW-1 Bhupinder Singh.

The version put forth by RW-1 Bhupinder Singh has been erroneously considered by learned Tribunal, more particularly, when the plea, vis-a-vis, accident, as pleaded in the written statement, has not been considered. In the written statement to the claim petition, respondent No.1-Bhupinder Singh had taken the plea of denial of accident and false implication of the offending bus and himself, in the accident. False FIR has been alleged to have been lodged.

In the light of the same, it is significant to mention that it was, at the time of appearing in the witness box that Bhupinder Singh had taken the plea about the accident to have taken place, on account of rash and negligent driving of the person, who was driving the motorcycle and talking on the mobile phone. This was never the plea raised in the written statement.

Also, it should be noted that respondent No.1-Bhupinder Singh, is facing trial, the record, whereof has been proved by way of examination of PW-3 Arun Sharma. Even, RW-1 Bhupinder Singh, while facing cross-examination had stated that he never made any representative about his false implication in the said case.

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In the light of the aforesaid, learned Tribunal had erroneously, on the basis of assumptions and presumptions, observed that the deceased was required to take every caution, while negotiating the turn near the railway crossing. This conclusion, as such, could not be drawn by learned Tribunal, without any material of contributory negligence, coming on record. In view of the plea of denial taken by the driver of the bus, at first instance and then stepping into witness box and also remaining silent qua his implication, in the criminal case, the plea of negligence, beyond something more than testimony of Bhupinder Singh, as such, does not stand established and therefore, blameworthiness could not be fastened upon the deceased, to the extent of 40%, as done by learned Tribunal and thus, on this ground, the finding of blameworthiness to this extent, as held by learned Tribunal, on issue No.1, is hereby reversed and this issue is completely decided, in favour of the appellants-claimants.

Now, let us consider the quantum of compensation, to be granted to the appellants-claimants.

So far as, the age of deceased Rajender Parsad is concerned, in view of the matriculation certificate, coming on record as Ex.P2, it stands amply established that date of birth of deceased was 25.05.1962 and in view of this recital, at the relevant time, the deceased was 51 years old. Also, it stands established that the deceased was serving in Government Middle (Elementary) School at village Langar Chhani, District Ambala and drawing salary of Rs.51,135/- per month.

However, learned Tribunal had erroneously held that widow of the deceased was entitled to benefit of last drawn salary of the deceased, every

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month, given by Government of Haryana. No doubt, the deceased was a government teacher and he died in harness and therefore, the claimants shall be entitled to compensation under the policy of **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, but however, the amount paid under the aforesaid Rules, is not paid on monthly basis. It is one time payment, while calculating the amount, keeping in view the age of the deceased employee and date of his superannuation. Precisely, on this account, there was no necessity, on the part of the Tribunal, to have bifurcated the benefit to be drawn by the claimants, upto the age of 58 years and to work on of the compensation, to be awarded, in the post-superannuation period of the deceased.

Rather, the 'work on' of the compensation, was required to be made, while considering the age of the deceased as 51 years, at the relevant time. The extent of amount received under the aforesaid Rules of Government of Haryana, do not figure anywhere, in the evidence. In the given circumstances, no monthly deductions, as done by learned Tribunal, was called for.

In the light of the aforesaid, the compensation, ought to be worked upon, while taking the age of the deceased as 51 years, at the relevant time. The monthly salary of the deceased was Rs.51,135/-, annual whereof, comes to be Rs.6,13,620/-

As per income tax slab existing at the relevant time, the tax on the initial income of Rs.2,00,000/- was 'nil'. The tax for the next amount from Rs.2,00,000/- to Rs.5,00,000/-, was 10% i.e. Rs.30,000/-. For the next Rs.5,00,000/- to Rs.10,00,000/-, the tax payable was 20%. In the present

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case, the taxable amount was Rs.1,13,620/- (Rs.613620-Rs.5,00,000), the tax payable whereof, fall in the bracket of 20%, which comes to be Rs.22,724/-. Thus, the total tax payable comes to be Rs.52,724/-. After deduction of this amount, the residue annual earnings of the deceased comes to be Rs.613620-52724=Rs.5,60,896/-.

Looking at the number of dependents, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction on the count of 'personal expenses' has to be 1/3rd, as done by learned Tribunal. Thus, after deducting the same, the loss of dependency is worked upon as Rs.5,60,896-1,86,965(1/3rd)=**Rs.3,73,931/-**.

Since, the deceased was permanent employee and was 51 years of age, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 15%, ought to be made, on the count of 'future prospects'. Thus, the earnings of the deceased is worked upon as Rs.3,73,931+56,089(15%)=**Rs.4,30,020/-** per annum.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)***, the appropriate and suitable multiplier, to be applied is '**11**', and thus, by applying the same, the loss of dependency, works out to be Rs.430020x11=**Rs.47,30,220/-**.

Besides the aforesaid, as per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, each of the appellants-claimants are entitled to 'parental', 'spousal' or 'filial' consortium, as required. As held in ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x3=Rs.1,45,200/-.

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Likewise, 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 appellants-claimants, on account of death of Rajender Parsad, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.47,30,220/-**
Loss of consortium	**:**	**Rs.1,45,200/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.49,11,720/-**

However, be it noted that the deceased was a government teacher and he died in harness and therefore, the claimants shall be entitled to the compensation, payable under the **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**. There is no evidence, as such, coming on record, about the receipt of any amount, under this scheme. However, PW-2 Devahuti, while facing cross-examination had stated that her case for salary has been forwarded to the government and that she has not yet got the salary, as the same is under process.

Probably, she is stated about the amount to be received under the aforesaid Rules. In any case, the amount so received under the **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, ought to be deducted, in consonance of the judgment passed by the Hon'ble Supreme Cout, in ***CA No.9654 of 2016***, titled as ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others***, decided on ***23.09.2016***.

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In the light of the same, before disbursement of the compensation, worked upon aforesaid, learned Tribunal shall verify about the fact of receipt of extent of amount by all the appellants-claimants, being beneficiaries under the **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, by way of taking of the affidavits of all the appellants-claimants and verify the same, at its own level. Upon such verification, the amount so received under the aforesaid Rules, shall be deducted from the compensation, as now worked upon. After doing the needful, the residue amount of compensation, shall be disbursed in the ratio of 50% to appellant-claimant No.1-Smt.Devahuti and 25% each to appellants-claimants No.2 and 3.

On the enhanced amount of the compensation i.e. **Rs.49,11,720-12,81,000=Rs.36,30,720/-**, 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.

Accordingly, the impugned Award dated 22.08.2014 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, the present appeal stands allowed.

September 06, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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

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