2024:PHHC:117706

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-3680-2017 (O&M)

The New India Assurance Company Ltd.

...Appellant

VERSUS

Manish Dhiman and others

...Respondents

(ii) FAO-7866-2017 (O&M)

Manish Dhiman and another

...Appellants

VERSUS

Narinder Singh and others

...Respondents

Date of Decision: September 06, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vinod Gupta and Mr.Mayank Gupta, Advocates for the appellant (in FAO-3680-2017) and for respondent No.3 (in FAO-7866-2017).

Mr.Divanshu Jain and Mr.Abhinav Goel, Advocates for the appellants (in FAO-7866-2017) and for respondents No.1 and 2 (in FAO-3680-2017).

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ARCHANA PURI, J.

These are two rival appeals filed, at the instance of appellant-insurance company as well as appellants-claimants, thereby, assailing the adequacy of the compensation awarded by learned Motor Accident Claims

Tribunal, on account of death of Ritu Dhiman, in a motor vehicular accident, which took place on 30.03.2016.

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

So far as, the factum and manner of taking place of the accident as well the liability fastened upon the driver, owner and insurer of the offending vehicle is concerned, none of the respondents, upon whom the liability was fastened, has challenged the findings on the aforesaid aspects. Thus, there is no necessity to further dwell on these aspects.

Be it noted that the appeals have only been filed to assail the quantum of compensation awarded by learned Tribunal.

It is categoric claim of the claimants that deceased Ritu Dhiman was working as Teacher in International Public School, Paprali and was earning Rs.30,000/- per month. Besides appellant-claimant No.1 Manish Dhiman, deposing about the vocation of deceased, the claimants have also examined PW-3 Ravinder Kumar, who was working as Fee Clerk in International Public School, Paprali road, Kurali. He has deposed in his affidavit that deceased was working as Biology Teacher in their school and her monthly salary was Rs.25,000/-. He proved the attested copy of salary certificate Ex.P1 and also proved on record salary statements Ex.P6 to Ex.P11 of all the teachers and other employees of International Public School from March 2014 to September 2014. Also, he deposed that as per salary statement, Ritu Dhiman was being paid salary of Rs.18,800/- per month and salary of Rs.20,800/- per month, from August 2014 onwards. Further, he deposed that salary of Ritu Dhiman and other teachers and employees of the school was paid in the form of account payee cheques. Besides the same, educational certificates of the deceased were also proved on record.

However, learned Tribunal, did not place reliance upon Ex.P1, the salary statement, showing salary of the deceased to be Rs.25,000/- per month, as it was held that the same is fabricated. In all these statements, as her name is mentioned in the foot of all the entries, whereas, names of other teachers have been inter-changed, every time. Furthermore, it was also held that the deceased was shown to be receiving HRA of Rs.5000/-, in addition to Rs.20,000/-, whereas, none of the other teachers, was shown to be receiving any HRA. Furthermore, while making reference to the testimony of PW-3 Ravinder Kumar, it was concluded that the salary was paid in cash, only to the deceased, whereas, the remaining teachers were being paid salary through cheque. On the basis of this material, it was held by learned Tribunal that it is highly doubtful and unbelievable that one teacher would be paid salary in cash and only one teacher would have been paid HRA of Rs.5000/- and therefore, this document cannot be believed and on the basis of other material coming on record, it was concluded that the deceased was earning Rs.20,800/- per month.

Considering this extent of monthly salary, the annual whereof, comes to be Rs.2,50,000/-, 1/3rd was deducted as personal expenses and dependency was worked upon as Rs.1,66,600/-. Considering the age of the deceased to be 30 years, multiplier of ‘17’ was applied and the compensation was worked upon as Rs.28,32,200/-. Besides the same, Rs.50,000/- was granted, towards loss of love and affection and another amount of

Rs.25,000/- was granted towards 'funeral expenses'. Thus, a total amount of Rs.29,07,200/- was granted.

In view of the aforesaid, at the very outset, it is essential to make mention that learned counsel for the insurance company has assiduously submitted that deceased never worked as Biology Teacher in International Public School and her name has been only added, at the tail end of all the documents, as observed by learned Tribunal and therefore, the compensation worked upon is exorbitant, which calls for extensive reduction.

However, the aforesaid submission is not tenable. PW-3 Ravinder Kumar, Fee Clerk of International Public School has been examined, who proved on record the Teachers Acquittance Roll for the various months. No doubt, in Ex.P1, Sr.No.59, which is last entry of the said register, is relating to Ritu Dhiman, but however, it cannot be said that this is fabricated entry. Learned Tribunal, without any material, while assuming and presuming, had held these documents, to be fabricated ones. The witness concerned had proved these documents, on the basis of the record, brought by him and therefore, it cannot be said that these are forged documents.

But definitely, there is entry of Rs.5000/- being paid as HRA, but none of the other teachers, are shown to be paid HRA. In the light of the same, without any further material coming on record, about the entitlement of the deceased to HRA, the amount of HRA, as such, cannot be considered. Perusal of the further salary statements, coming on record, which are Ex.P6 to Ex.P10, it is evident that the deceased being PGT Teacher, in the month of February 2014, was receiving an amount of Rs.18,800/-, in the account bearing No.06622191014808, which ultimately, stood enhanced to Rs.20,800/- as per Ex.P10.

Now, it is submitted by learned counsel for the appellant that the deceased did not work in the school for some period of time, on account of being involved in improving upon her education and after post-graduation, she had again joined the school, but the same does not stand established. It is submitted that only on this basis, she was held entitled to HRA, but however, without any satisfactory evidence, coming on record, the entitlement of HRA, in this manner, as asserted, does not stand established.

In the given circumstances, the salary ought to be taken as Rs.20,800/- per month, which is evident from Ex.P10, the annual whereof comes to be Rs.2,49,600/-. Considering this amount of earnings of the deceased, the same does not fall within the taxable limits, prevalent at the relevant time.

The date of birth of the deceased, as evident from the educational certificate is 03.02.1987 and thus, she is established to be falling in the age group of 29-30 years.

To the aforesaid earnings i.e. Rs.2,49,600/-, considering the age of the deceased, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition to the extent of 40%, ought to be made, on the count of 'future prospects'. Thus, the earnings of the deceased is worked upon as Rs.249600+99840=Rs.3,49,440/-, per annum.

Considering the number of dependents to be two, the deduction, on the count of 'personal expenses' as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, ought to be to the extent of 1/3rd. After making this deduction, the annual loss of dependency, comes to be Rs.349440-116480=Rs.2,32,960/-.

Considering the age of the deceased, the appropriate and suitable multiplier, as per ***Sarla Verma's case (supra)*** to be applied is '**17**', and thus, by applying the same, the loss of dependency, works out to be Rs.232960x17=**Rs.39,60,320/-**.

Besides the same, taking into consideration, the claimants to be husband and son of deceased Ritu Dhiman, they are entitled to compensation, on the count of 'spousal', 'parental' consortium as held in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***. 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.48,400x2=Rs.96,800/-. 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 claimants, on account of death of Ritu Dhiman, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.39,60,320/-**
Loss of consortium	**:**	**Rs.96,800/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.40,93,420/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.40,93,420-29,07,200=Rs.11,86,220/-**. On the enhanced amount of the compensation, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of the enhanced amount of compensation.

The compensation amount already awarded shall be apportioned as ordered by learned Tribunal. However, out of the enhanced amount, as now awarded, appellant-claimant No.1-Manish Dhiman is held entitled to Rs.3,86,220/- and appellant-claimant No.2 Tavish Dhiman is held entitled to Rs.8,00,000/-.

Accordingly, the impugned Award dated 01.03.2017 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, FAO-3680-2017, filed by appellant-insurance company stands dismissed, whereas, FAO-7866-2017, filed by the appellants-claimants, stands allowed.

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

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