

2024:PHHC:052248

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4493-2011 (O&M)
Date of Decision: April 16, 2024

Mahima Gaur and another

...Appellants

VERSUS

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Deepak Arora, Advocate
for the appellants.

Mr.Pardeep Goyal, Advocate
for respondent No.3-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation, granted by learned Motor Accident Claims Tribunal, on account of death of Ashok Kumar Gaur, in a motor vehicular accident, which took place on 20.01.2008.

Vide Award dated 04.04.2011, learned Tribunal had decided two claim petitions, one relating to the death of Ashok Kumar Gaur and another relating to the damage caused to the car, of which deceased Ashok Kumar Gaur was the occupant, at the time of the accident.

On appraisal of the evidence adduced, in the claim petition qua death of Ashok Kumar Gaur, learned Tribunal had granted compensation to

the extent of Rs.5,05,000/- to the appellants-claimants.

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

That, on 20.01.2008, Ashok Kumar Gaur, was going to his village Paldi from Mahilpur, after purchasing domestic articles, in his car bearing registration No.PB-10AB-2700 and was followed by Jaspal Singh, in another car. At about 6.35 pm, when Ashok Kumar Gaur reached ahead of tubewell of Baljeet Singh of village Khera and was going at a slow speed, on correct left side of the road, the driver of the truck (Tipper bearing registration No.PB-06C-2308, which was going ahead of the car of the deceased, suddenly applied the brakes in the middle of the road, as a result whereof, the car being driven by Ashok Kumar Gaur, struck against the backside of the truck and he died instantaneously and the car was also damaged.

On appraisal of the evidence adduced, learned Tribunal concluded about there to be contributory negligence, on the part of the deceased, who had struck his car against the truck (tipper) from behind. The negligence was apportioned to the extent of 50%.

Learned Tribunal had concluded about deceased Ashok Kumar Gaur to be 33 years old and while considering about the deceased to be owner of Maruti car bearing registration No.PB-10AB-2700 and Tata 407 bearing registration PB-07M-9261 and about his plying the same on hire and also considering the indulgence of the deceased in dairy farming, had taken the earnings of the deceased as Rs.7500/-per month. After making deduction of 50%, on the basis of the contributory negligence, learned Tribunal had considered the earnings of the deceased as Rs.3750/- per month. The

multiplier of '16' was applied and on the count of 'personal expenses' 1/3rd was deducted and in this manner, the compensation was worked upon as Rs.4,80,000/-. Besides the same, claimant No.1 was also held entitled to Rs.10,000/-, on the count of 'loss of consortium' and claimant No.3 was held entitled to Rs.10,000/- on the count of 'loss of love and affection'. Besides the same, another sum of Rs.5,000/- was given, on the count of 'funeral expenses'. Thus, the total compensation was worked upon as Rs.5,05,000/-, vis-a-vis, death of Ashok Kumar Gaur, in the accident in question.

Though, in the grounds of appeal, it is the pleaded that the extent of earnings of the deceased have been taken on lower side and even the multiplier applied is not appropriate, but however, learned counsel for the appellants-claimants, during the course of arguments, submits that he does not dispute the extent of earnings, as worked upon by learned Tribunal and also about the application of the multiplier, which is appropriate as per ***Sarla Verma's case***, but however, he submits that as per ***Pranay Sethi's case***, the compensation granted under the conventional heads, calls for intervention by this Court and thus, he limits his prayer only for enhancement qua the conventional heads only.

Also, learned counsel for the insurance company submits that learned Tribunal had appropriately considered the earnings of the deceased as Rs.7,500/- per month. Even, the multiplier of '16', so applied, is just and suitable, as per ***Sarla Verma's case***. He further submits that he has no

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Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

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objection, if the compensation qua the conventional heads is enhanced, as per the prevalent law.

Considering the submissions aforesaid, it is pertinent to mention that even though, it was the claim of the claimants before learned Tribunal about the deceased to be having earnings of Rs.15,000/- per month, but however, considering the inputs of the expenditure to be incurred on the maintenance of the vehicles, owned by the deceased and also with regard to the indulgence in dairy farming, the loss of earnings has been appropriately considered as Rs.7,500/- per month, which, as such, is not disputed by learned counsel for the appellants. In the given circumstances, the earnings, as such, even though, taken as Rs.7,500/- per month, but however, learned Tribunal had appropriately considered the aspect of contributory negligence to be there, to the extent of 50%, on the part of the deceased, as he struck against the truck from backside and the gravity of the force, with which, he struck the car into the truck (tipper), itself speaks about the negligence to be there, on the part of deceased Ashok Kumar Gaur, as he had not maintained safe distance and also he had no full control over the vehicle, driven by him. In these circumstances, learned Tribunal had appropriately apportioned the negligence to the extent of 50%. Taking it to be so, the reduced earnings of the deceased, comes to be Rs.3750/-, annual whereof, comes to be Rs.45,000/-.

Keeping in view the age of the deceased to be 33 years, on the count of 'future prospects', addition of 40% ought to be made, which comes to be $\text{Rs.45,000} + 18000(40\%) = \text{Rs.63,000/-}$. Learned Tribunal had appropriately applied the suitable multiplier of '16' and while applying the

same, the loss of earnings comes to be Rs.63000x16=**Rs.10,08,000/-**.

Besides the aforesaid, the compensation awarded by learned Tribunal, under the conventional heads, definitely calls for intervention.

As per ***Pranay Sethi's case (supra)***, the compensation, ought to be paid to the claimants, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses', which was stated to be to the extent of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the aforesaid counts, works out to be, **Rs.48,400/-, Rs.18,150/- and Rs.18,150/-**, respectively.

As per '***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***', all the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required.

Apart from appellant No.1, who is widow of the deceased, even, appellant No.2, who is the son, is also entitled to 'filial consortium'. Thus, both the appellants are held entitled to Rs.48,400/- each, on the count of 'loss of consortium'.

However, learned Tribunal had granted a sum of Rs.10,000/- to appellant No.2, on the count of 'loss of love and affection'. But anyhow, as held in ***Magma's case (supra)***, the loss of love and affection is comprehended in 'loss of consortium' and as such, on this count, no compensation is separately required to be awarded.

Considering the same, the compensation payable to appellants-claimants, on account of death of Ashok Kumar Gaur , is re-computed, as

herein given:-

Loss of dependency	:	Rs.10,08,000/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.11,41,100/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,41,100-5,05,000/- =Rs.6,36,100/-**. On the enhanced amount of the compensation i.e. **Rs.6,36,100/-**, 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. The differential amount, as now awarded, be apportioned between the appellants-claimants in equal proportion. 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.

April 16, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No