2024:PHHC:098514

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(340)

FAO-8225-2017
Date of decision: 30.07.2024

Harbans Lal and another

...Appellants

Versus

Dilbagh Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anil Kumar Spehia, Advocate
for the appellants.

None for respondent No.1.

Mr. Vikas Chatrath, Advocate, and
Ms. Tanya Sehgal, Advocate
for respondent No.2.

****

VIKAS BAHL, J. (ORAL)

1. Husband and son of the deceased-Sunita Rani has filed the present appeal for enhancement of the amount of compensation which has been awarded by the Motor Accident Claims Tribunal, Jalandhar, vide judgment dated 18.03.2017. The facts that the deceased-Sunita Rani had died in an accident which took place on 18.09.2016 and the offending vehicle was owned and driven by respondent No.1 and the said vehicle was insured with respondent No.2 are not disputed.

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2. Learned counsel for the appellants has submitted that in the present case, the amount of compensation which has been awarded by the Tribunal i.e. Rs.7,44,000/- along with interest deserves to be enhanced. It is further submitted that no amount has been awarded on account of loss of estate and an amount of Rs.18,000/- is to be awarded on account of the said fact. It is stated that in the present case, it has been proved that the deceased was a housewife and was 54 years of age at the time of her death and thus, taking into account the contribution of the deceased housewife towards her family, the amount of salary to be assessed should be Rs.9,000/- per month in the light of the decision of the Co-ordinate Bench of this Court in ***FAO-218 of 2014*** titled as "***United India Insurance Co. Ltd. Vs. Sube Singh and others"***, ***decided on 15.01.2014***, the SLP against which has also been dismissed by the Hon'ble Supreme Court, vide judgment dated 08.09.2014 and also the judgment of the Co-ordinate Bench of this Court in "***Meham Singh and others Vs. Shamsher Singh and others***, reported as ***2019(1) PLR 250*** as well as the judgment ***dated 05.11.2019 passed in FAO-1861-2016*** titled as "***Ravi and others Vs. Ankush and others"***. It is stated that an additional amount of Rs.6,01,000/- is to be paid to the present appellants in view of the law laid down by the Hon'ble Supreme Court in cases 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.2-Insurance Company, on

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the other hand, has submitted that in the present case, total amount on account of loss of consortium, which has been ordered by the Tribunal, is Rs.1,00,000/-, whereas, as per the best case of the appellants, the amount of Rs.96,000/- can be ordered to two claimants on the said account and thus, an amount of Rs.4,000/- is to be reduced. It is stated that further an amount of Rs.7,000/- is to be reduced on account of funeral expenses as the Tribunal had awarded an amount of Rs.25,000/-, whereas, as per the judgments, which have been cited by learned counsel for the appellants, the funeral expenses to be paid to the claimants is Rs.18,000/-. It is further stated that with respect to income, no document has been produced by the appellants to show that the deceased was giving any tuition or was doing the business of trading of bed sheets, thus, an amount of Rs.4,500/- which has been assessed, has been rightly assessed by the Tribunal.

4. Learned counsel for the appellants, in rebuttal, keeping in view the objections of respondent No.2 with respect to the loss of consortium and funeral expenses, has prepared a revised chart, the relevant portion of which has been reproduced as under: -

"DOA	*:*	*18.09.2016*		
Offending vehicle	*:*	*Car PB-02-CU-0985 11.00 a.m.*		
Claim petition u/s 166 of the M.V. Act				
Deceased	*:*	*Sunita Rani*		
Age	*:*	*54 years*		
Occup.	*:*	*Tuition, business of selling bed sheets as well as housewife*		
Income	*:*	*Rs.19,000/- p.m.*		
Claimant:		*(1)*	*Husband*	*Harbans Lal*
		(2)	*Son*	*Gaurav*

<u>Assessment by Tribunal</u>

Income as house wife *:* *Rs.4,500/- p.m.*

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		Rs.54,000/- p.a.
M	*:*	*11*
LoC	*:*	*1 Lakh*
F.E	*:*	*Rs.25,000/-*
Medical Exp	*:*	*Rs.25,000/-*
Total	*:*	*Rs.07,44,000/- interest : 6%*

For Enhancement

Income	*:*	*Rs.9,000/- p.m., Rs.1,08,000/- p.a.*	
Multiplier	*:*	*11*	
		Rs.9,000 x 12 x 11	*= Rs.11,88,000/-*
LoC	*:*	*Rs.48,000/- each*	*= Rs.13,45,000/-*
LoE	*:*	*Rs.18,000/-*	
F.E	*:*	*Rs.18,000/-*	
Medical Exp.	*:*	*Rs.25,000/-*	
		By Tribunal =	*Rs.7,44,000/-*
		Enhancement =	*Rs.6,01,000/-*
		Interest =	*9%"*

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 54 years,

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multiplier of 11 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:-*
>
> *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.*
>
> *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*

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> *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,

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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*

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> *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 learned counsel for the appellants resolves all the issues and the only issue, which is to be determined, is as to what should be taken as the income of deceased-Sunita

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Rani. The loss of consortium, loss of estate and funeral expenses have been rightly given in the revised chart. Even the multiplier has been correctly applied.

13. With respect to amount which is to be taken as notional income of the deceased, it would be relevant to note that the Tribunal had taken the notional income of the deceased as Rs.4,500/- on the basis of the fact that the services rendered by housewife to her household should be given a broad interpretation and an expansive meaning and further it was observed that while assessing the said notional income, no deduction towards personal expenses should be taken into consideration. The basis of assessing notional income was not any document or evidence with respect to the work done by the deceased, but was on account of the above-said principle. The said principle has been crystallized by a Co-ordinate Bench of this Court in ***<u>Sube Singh's</u>* (supra)**. The relevant of the said judgment is reproduced herein below: -

> *"3. Learned counsel for the appellant has argued that even while noticing that the income of a skilled worker in 2012 was approximately ₹8000/- the Tribunal has wrongly assessed the income of the deceased as ₹9000/-. As per him once the notional income had been taken a deduction had to be made for personal expenses. This argument is flawed. In* ***Lata Wadhwa and others v. State of Bihar and others*** *reported as 2001(4) RCR(Civil) 673 (where the accident had taken place in 1981) the Hon'ble Supreme Court evaluated the contribution of a house wife at ₹3000/-per month. The accident in the present case took place after 23 years. In my considered opinion to tag a house wife as a 'skilled worker' alone does not do complete justice to her multifarious role as a home manager. Keeping in view the*

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> *lapse of 23 years between the accident in the case of **Lata Wadhwa** and the present accident and my conclusion that a house wife is something more than a mere skilled worker it would not be unreasonable to estimate the contribution of the deceased in the present case at a higher figure. On the whole I see no reason for reducing the quantum."*

14. In the above-said case, after relying upon the judgment of the Hon'ble Supreme Court in "***Lata Wadhwa and others Vs**. **State of Bihar and others"***, reported as ***2001(4) RCR (Civil) 673***, the Co-ordinate Bench came to the conclusion that the amount of Rs.9,000/- awarded as notional income by the Tribunal was in accordance with law as housewife is required to do multifarious role as a home manager. In the said case, the accident had taken place in the year 2012, whereas, in the present case, the accident had taken place on 18.09.2016. The SLP against the judgment has also been dismissed on 08.09.2014. The Single Bench in ***Meham Singh's (supra)*** as well as ***Ravi's (supra)*** have also followed the judgment in the case of ***Sube Singh's (supra)***.

15. In view of the law laid down in the above-said judgments, the claim of the present appellants to the effect that the notional income of the deceased should be assessed as Rs.9,000/- p.m. is reasonable and in accordance with law.

16. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the impugned award dated 18.03.2017 is modified and respondent No.2-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.6,01,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim

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petition till the date of actual payment within a period of six weeks from today.

July 30, 2024 **(VIKAS BAHL)**
naresh.k **JUDGE**

Whether speaking/reasoned:- Yes
Whether reportable:- Yes

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