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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-83-2023 (O&M)
Date of decision: 23.07.2024

Ravi

...Appellant

Versus

Bhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjay Jain, Advocate for the appellant.

Mr. Ankur Gupta, Advocate
for respondent No.4-Insurance Company.

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VIKAS BAHL, J. (ORAL)

CM-365-CII-2023

1. This is an application filed under Section 5 of the Limitation Act for condonation of delay of 1219 days in filing the present appeal.

2. Learned counsel for the applicant-appellant has submitted that the applicant-appellant was a minor at the time when the impugned award was passed as his date of birth is 24.03.2004 and he only attained the age of majority on 24.03.2022 and after having become a major, the present appeal has been filed after getting the necessary documents and there is only a delay of 105 days after the present appellant has become major. It is further submitted that the said delay is thus on the bona fide ground and thus, deserves to be condoned.

3. Learned counsel for respondent No.4-Insurance Company has opposed the present application and has submitted that even assuming the present application was to be allowed, then the applicant-appellant should not be entitled to interest from the date of claim petition but at best should be granted interest on the enhanced amount from the date of award.

4. Learned counsel for the applicant-appellant has in rebuttal agreed to the said stand of counsel for respondent No.4.

5. Keeping in view the abovesaid facts and circumstances and also the averments made in the application, the present application is allowed and the delay of 1219 days in filing the present appeal is condoned in view of the statement made on behalf of applicant-appellant and respondent No.4.

Main case

1. One of the claimants i.e. son of the deceased Parshotam Dass has filed the present appeal for modification of the award vide which compensation to the extent of Rs.8,45,000/- has been awarded and is seeking enhancement of the same.

2. Learned counsel for the appellant as well as respondent No.4 have fairly stated that as far as the occurrence of the accident on 02.06.2013 is concerned and also the fact that respondent No.1 was driver of the offending vehicle and it is on account of his rash and negligent driving that the accident occurred and also the fact that respondent No.2 is owner of the offending vehicle and respondent No.4 is the Insurance Company with respect to offending vehicle, there is no dispute.

3. Learned counsel for the appellant has submitted that in the

present case, the compensation deserves to be enhanced inasmuch as on the ground of loss of consortium, only an amount of Rs.1,00,000/- has been awarded whereas there are six claimants in all i.e., Lakshmi Devi (mother of the deceased), four children of the deceased and one widow who was impleaded as respondent No.4 in the claim petition before the Tribunal and thus, total amount on account of consortium that is to be awarded is Rs.2,88,000/- (Rs.48,000/- x 6) as per settled law. It is further submitted that nothing has been given by the Tribunal on account of loss of estate whereas the said six claimants are entitled to Rs.18,000/- on the said account. It is submitted that the monthly salary of the deceased has been taken as Rs.5,000/- but it is proved on record that he was a driver and thus, is to be treated as a semi skilled worker and at the relevant time, minimum wages with respect to the semi skilled worker was Rs.5861/- and thus, it is the said amount which is required to be taken into consideration. It is also submitted that the benefit of future prospects has also not been given which is also required to be given. It is prayed that the amount be enhanced and the interest at the rate of 9% per annum be given. In support of his arguments, he has relied upon the law laid down by the Hon'ble Supreme Court in case 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***.

4. Learned counsel for respondent No.4, on the other hand, has submitted that the Tribunal had granted funeral expenses to the tune of

Rs.25,000/- whereas the said amount is to be reduced to Rs.18,000/-. It is further submitted that the claim of interest at the rate of 9% per annum is highly excessive and the present rate of interest is 7.5% per annum and the same is to be awarded not from the date of filing of the claim petition but at best from the date of passing of the award. It is also submitted that the compensation has been rightly awarded by the Tribunal.

5. Learned counsel for the appellant has given a revised chart and has reduced the funeral expenses from Rs.25,000/- to Rs.18,000/- and the revised chart is reproduced hereinbelow:-

"Claimants: *Appellant and respondent no. 5 to 10*
Date of Accident: *02.06.2013*
Nature of Case: *Death*
Age of the Deceased: *35 years*
Dependents: *Mother, widow, 4 children.*
Details of Relief Granted / Claimed

Details	*Before the Tribunal*	*Compensation claimed as per judgments of Sarla Verma, Pranay Sethi & Magma General Insurance*
Income	*Monthly:Rs.5000/-*	*Monthly: Rs.5861/-*
Future Prospects	*Nil*	*40% = Rs.8205/-*
Deduction	*1/4th*	*1/4th = (¾) Rs.6154*
Multiplier	*16*	*16*
Loss of estate	*Nil*	*Rs.18000/-*
Funeral expenses	*Rs.25,000/-*	*Rs.18000/-*
Loss of consortium	*Rs.1 Lakh*	*Rs.48000 x 6 Rs.2,88000/-*
Total Compensation	*Rs.8,45,000/-*	*Rs.15,05,568/-*

Interest:	*9%*	*7.5%*
Difference		*Rs.6,60,568/-*

6. It is submitted that on the basis of the said revised chart, an amount of Rs.6,60,568/- be paid as enhanced compensation to the six claimants including respondent No.4 in the claim petition i.e. Lucky widow of the deceased.

7. This Court has heard learned counsel for the parties and has perused the paper book.

8. 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."*

9. 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 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."

10. 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.

11. 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, 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 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."

12. 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.

13. The chart as presented by learned counsel for the appellant is in accordance with law except on the part of rate of interest. Amount to be paid on account of loss of consortium has been correctly mentioned in the said chart and even the amount on account of loss of estate, which was not given by the Motor Accident Claims Tribunal, is required to be given to the claimants. Future prospects at the rate of 40% in view of the age of the deceased being 35 at the time of death is also required to be given to the claimants. The funeral expenses in the chart has been rightly reduced from Rs.25,000/- to Rs.18,000/-. With respect to the income, this Court is of the opinion that it is not in dispute that the present appellant was a driver and

thus, he would come at least within the definition of semi skilled and, therefore, monthly income which is required to be assessed should be Rs.5861/- which were the minimum wages at the relevant time. Thus, all the six claimants are entitled to the enhanced amount of Rs.6,60,568/-. With respect to rate of interest, this Court is consistently awarding rate of interest at the rate of 7.5% per annum which rate of interest is also reasonable in the present case. However in view of the fact that there is delay and it has been agreed between the appellant and respondent No.4, rate of interest at the rate of 7.5% per annum is to be awarded from the date of award and not from the date of filing of claim petition.

14. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and award passed by the Motor Accident Claims Tribunal is modified and respondent No.4-Insurance Company is directed to pay the enhanced amount of Rs.6,60,568/- along with interest at the rate of 7.5% per annum from the date of passing of the award till the date of payment, within a period of six weeks from today. The enhanced amount would be paid in equal proportion to the claimants i.e. Lakshmi Devi (mother of the deceased-Parshotam Dass), Suman, Sachin, Kanchan, Ravi, and Lucky (widow of deceased-Parshotam Dass).

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

23.07.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**