IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7591-2016 (O&M)
Date of Decision: April 25, 2024

ICICI Lombard General Insurance Company Ltd.

...Appellant

VERSUS

Smt.Birmati and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Manvi Verma, Advocate for
Mr.Rajneesh Malhotra, Advocate
for the appellant.

Mr.Sagar Dangi, Advocate for
Mr.J.P.Jangu, Advocate
for respondents No.1 to 3.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-insurance company, thereby, questioning the quantum of the compensation awarded by learned Motor Accident Claims Tribunal, on account of death of Jagram, in a motor vehicular accident, which took place on 02.11.2014.

On appraisal of the evidence, brought on record, learned Tribunal, while considering the deceased to be working as Beldar and drawing salary to the extent of Rs.31,409/- and thereby, making addition of 50%, while deducting 1/3rd of the salary, on account of personal expenses and thereby considering the deceased to be falling in the age group of 50-55 years, had applied the multiplier of ‘11’ and concluded about the compensation, on account of loss of dependency to be Rs.41,45,988/-.

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Besides the same, Rs.1 lakh was given on account of 'loss of consortium' and on account of transportation and funeral expenses, another sum of Rs.25,000/- was given. In total, the compensation was worked upon as Rs.42,71,000/-.

Feeling aggrieved by this extent of compensation granted by learned Tribunal, the insurance company has filed the present appeal.

So far as, the fact of the accident, manner of taking place of the same as well as the involvement of the truck bearing registration No.HR-55Q-0609, driven by respondent No.1-Shivender, is concerned, no appeal, as such, has been filed by either driver or owner of the offending vehicle. It is only the insurance company, which had filed the appeal, that too only for seeking reduction of the compensation.

In the claim petition, it is the pleaded case of the claimants about deceased to be 55 years old, at the time of accident. However, considering the material coming forth in the evidence, learned Tribunal had considered the deceased to be falling in the age bracket of 50-55 years. The employment of the deceased as Beldar in Flood Control Department, New Delhi, as such, has not been disputed by the insurance company and in this regard, suffice to consider the testimony of PW-3 Meena, Work-charge Typist, who, on the basis of the record, deposed about said employment of the deceased and also deposed about deceased to be drawing salary of Rs.31,409/- in the month of October 2014. She had also tendered into evidence, certified copy of salary certificate Ex.P4, pay bill Ex.P5, service book Ex.P6 and PVR Ex.P7.

In the light of the aforesaid, learned counsel for the appellant

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submits that learned Tribunal erroneously took salary of deceased Jagram as Rs.31,409/- for working upon the compensation. In fact, income tax was not deducted, which was required to be deducted. Further also, it is submitted that future prospects have been erroneously added to the extent of 50%, whereas, it ought to be 30%. Besides the same, under the conventional heads, exorbitant amount of compensation has been awarded, which calls for reduction.

On the other hand, learned counsel for the claimants submits that the compensation awarded by learned Tribunal is just and reasonable, which calls for no further reduction, as pleaded.

In the light of the settled prevalent law, the compensation awarded, as detailed aforesaid, calls for re-computation.

Before, adverting to the same, it is pertinent to mention that learned Tribunal had considered the deceased to be falling in the age bracket of 50-55 years. However, to reach such conclusion, no specific reason, as such, has been assigned by learned Tribunal. In fact, the assertion made in the claimant did weigh in the mind of the Tribunal to so conclude. However, it should be noted that though, in the claim petition, it was asserted about the deceased to be 55 years old, but however, in the service record produced by PW-3 Meena, the service book of the deceased has also been proved, copy whereof is Annexure P-6, which clearly depicts the date of birth of Jagram to be 28.12.1964. It has been so mentioned at two different places in the service book, about such being the date of birth. This document came into existence, much prior to the accident in question. Thus, when the specific date of birth, as such, is coming forth and that too, on the

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basis of the document, which came into existence, much prior to the death of the deceased, the computation of age, ought to be made, on the basis thereof. While taking it to be so, on the date of death of Jagram i.e. 04.12.2014, he was few days less than 50 years of age. For all intents and purposes, he is taken to be less than 50 years and as such, cannot be considered, to be falling in the age group of 50-55 years, as held by learned Tribunal.

From the evidence adduced, it stands established that deceased was employed as Beldar and was posted in Flood Control Department, New Delhi and his monthly earnings were Rs.31,409/-, annual whereof, comes to be Rs.3,76,908/-. Learned Tribunal had taken it as a whole, for working upon the compensation, payable to the claimants. However, for the purposes of assessment of the compensation under the Motor Vehicles Act, as per ***Pranay Sethi's case***, it is the income minus tax component, which ought to be taken into consideration. However tax component, as such, has not been taken into consideration, which ought to be considered. As such, tax was required to be worked upon by learned Tribunal.

At the relevant time, as per prevalent income tax slab, the income upto Rs.2,50,000/- was non-taxable. From the income bracket of Rs.2,50,000-Rs.5,00,000/-, the tax was 10%. The annual income of the deceased was Rs.3,76,908/-. Thus, the taxable income comes to be Rs.3,76,908-2,50,000=Rs.1,26,908/- and the tax to be levied as Rs.12,690/-. After deducting this amount of tax from Rs.3,76,908/-, the residue earnings of the deceased, works out to be Rs.3,64,218/-.

Considering the age of the deceased to be less than 50 years, as per ***Pranay Sethi's case***, addition of 30% ought to be made, on the count of

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'future prospects'. Making it to be so, the income of the deceased is worked upon as Rs.364218+Rs.109265(30%)=**Rs.4,73,483/-**.

From the aforesaid amount, 1/3rd is to be deducted, as done by learned Tribunal, on the count of 'personal expenses' as per ***Sarla Verma's case***. Thus, making this deduction, the loss of dependency comes to be Rs.4,73,483-157827=Rs.3,15,656/-.

Learned Tribunal had applied the multiplier of '11' to work upon the compensation, but however, considering the age of the deceased to be less than 50 years, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**13**' and by applying the same, the loss of dependency, works out to be Rs.315656x13= **Rs.41,03,528/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in ***Pranay Sethi's case (supra)***.

It is pertinent to mention that learned Tribunal had granted Rs.1 lakh to the claimant No.1 i.e. wife of the deceased, towards 'loss of consortium'. However, 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. Similarly, the compensation granted by learned Tribunal on the count of 'funeral expenses' is also on higher side.

In view of the same, appellants-claimants are entitled to compensation, on the aforesaid counts. As per ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium' is

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009
Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

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to the extent of **Rs.48,400/-**, to each of the claimants and on the similar pattern, 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 Jagram, is re-computated, as herein given:-

Loss of dependency	**:**	**Rs.41,03,528/-**
Loss of consortium	**:**	**Rs.1,45,200/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.42,85,028/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.42,85,028-42,71,000=Rs.14,028/-**. On the enhanced amount of the compensation i.e. **Rs.14,028/-**, the respondents-claimants No.1 to 3, 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 residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid terms, the present appeal stands dismissed with the modification qua quantum of compensation.

April 25, 2024
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(ARCHANA PURI)
JUDGE

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

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