IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4840-2014 (O&M)
Date of Decision: March 01, 2025

Smt.Mukesh Kumari and others

...Appellants

VERSUS

Rajesh Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashit Malik, Advocate
for the appellants.

Respondents No.1 and 2 proceeded against ex-parte.

Mr.S.S.Sidhu, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The appellants-claimants have filed the present appeal, thereby seeking enhancement of the compensation granted by learned Motor Accident Claims Tribunal, on account of death of Suresh Kumar, in a motor vehicular accident and also assailed complete exoneration granted to the insurance company, to pay the compensation.

The appellants-claimants had filed the claim petition under Section 163-A of the Motor Vehicles Act, for seeking compensation. As per the version put forth by the claimants, on 27.10.2010, Suresh Kumar along with Subhash, was the pillion rider of motorcycle bearing registration No.HR-32C-9043, driven by respondent No.1-Rajesh Kumar. At about

10.00 p.m., when they reached near village Jajanwala, suddenly a *Neel Gai* came in front of the motorcycle, as a result whereof, respondent No.1, turned his motorcycle to save it, but he lost control over the motorcycle, which plunged into ditches, resulting into multiple serious and grievous injuries. Suresh Kumar was shifted to Janta Hospital, Barwala, but he succumbed to his injuries. DDR No.11 dated 28.10.2010 was registered.

On appraisal of the evidence on record, learned Tribunal had concluded about Suresh Kumar to have died in the accident, arising out of the use of motorcycle bearing registration No.HR-32C-9043. Thereupon, learned Tribunal, while considering the deceased as an agriculturist, took his earnings as Rs.3200/- per month. 1/3rd was deducted towards 'personal expenses' and the loss of dependency was taken as Rs.2200/-, annual whereof is Rs.26,400/-. Considering the age of the deceased to be 26-27 years, multiplier of '18' was applied and the compensation was worked upon as Rs.4,75,200/-. Besides the same, another amount of Rs.2000/- was granted, on the count of 'funeral expenses', Rs.5000/- towards 'loss of consortium' and Rs.2500/-, on the count of 'loss of estate'. Thus, in total, the compensation was granted to the extent of Rs.4,84,700/-. However, learned Tribunal, had saddled the liability, only upon respondents No.1 and 2, who are driver and owner of the offending motorcycle and complete exoneration was granted to the insurance company to pay the compensation.

Feeling aggrieved, the appellants-claimants filed the present appeal, for seeking enhancement of the compensation and also made a prayer for saddling the liability upon the respondent-insurance company also.

However, the compensation worked upon aforesaid, do call for re-computation.

The earnings of the deceased was taken as Rs.3200/- per month, which, as such, is not contested by learned counsel for the appellants-claimants. However, the deduction of 1/3rd, on the count of 'personal expenses' to the extent of Rs.1000/- so made by learned Tribunal, in on lower side. Considering the extent of earnings, 1/3rd comes to be Rs.1066/- and the residue amount, comes to be Rs.3200-1066=Rs.2134/-, annual whereof comes to be Rs.25,608/-. Considering the age of the deceased to be 26-27 years, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable and appropriate multiplier to be applied is '17', instead of '18', as applied by learned Tribunal. Thus, by applying the same, the loss of dependency works out to be Rs.25608x17=**Rs.4,35,336/-**.

Besides the aforesaid, as per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, each of the appellants-claimants are entitled to 'parental', 'spousal' or 'filial' consortium, as required. Considering the same, as per ***Pranay Sethi's case (supra)***, an amount of Rs.40,000/- is required to be granted to the dependents, which also called for further enhancement to the extent of 10%, after period of every three years of pronouncement of the judgment and taking it to be so, the compensation, on the count of 'loss of consortium', at present, works out to be Rs.48,400/- to each of the claimants i.e. Rs.48,400x4=**Rs.1,93,600/-** and 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 appellants-claimants, on account of death of Suresh Kumar, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.4,35,336/-**
Loss of consortium	**:**	**Rs.1,93,600/**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.6,65,236/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,65,236-4,84,700=Rs.1,80,536/-**. On the enhanced amount of the compensation i.e. **Rs.1,80,536/-**, 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.

However, the liability to pay the compensation was saddled solely upon the driver and owner of the offending motorcycle. Considering the fact that three persons were travelling on the aforesaid motorcycle, the insurance company was absolved from the liability to pay the compensation.

The copy of the insurance policy has been proved on record, which reveals about the seating capacity to be ‘two’ and this liability includes the liability incurred for the use of the vehicle for death or injury of the passenger, on the vehicle. The word ‘passenger’ in this context, must be seen as persons travelling on the motorcycle. If there was policy cover for risk of death or injury to a passenger, then the insurer will become liable by the user of the motorcycle, in terms of the policy. Consequently, the complete denial of liability by the insurance company cannot be accepted.

In this context, it is pertinent to mention that no doubt, three persons were occupants of the motorcycle in question, at the relevant time, but however, the competence of the person, who was driving the motorcycle, as such, was not disputed. Nothing is coming on record, about the accident to have taken place, solely, on account of three occupants travelling on the offending motorcycle.

In the given circumstances, the liability of the insurance company, is to be restricted only to two passengers, meaning thereby, the entitlement for the rider and the entitlement of the representatives of the pillion rider. Deceased Suresh Kumar was the pillion rider, who had died, as a result of the accident in question and therefore, claim on account of his death is under consideration. Thus, the insurance company, ought to be made liable to the sole victim of the accident in question.

Considering the same, the insurance company is also held liable to pay the compensation, together with respondents No.1 and 2, jointly and severally.

Accordingly, the impugned Award dated 03.07.2013 stands modified, to the extent, as indicated aforesaid.

With the above observations, the present appeal stands allowed.

March 01, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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