IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

251 **FAO-3462-2022**
Date of decision: 15.12.2022

RAJ KUMAR AND ORS. **..Appellant (s)**

Versus

SUNIL KUMAR MISHRA AND ORS. **..Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Robin Dutt, Advocate for the appellants.

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<u>NIDHI GUPTA, J (Oral)</u>

This is an appeal seeking enhancement of compensation of Rs.23,10,028/- awarded by the Motor Accidents Claims Tribunal,Yamuna Nagar (hereinafter referred to as 'the Tribunal'), in MACT No.244 of 2019 vide Awarddated 22.03.2022.

The Tribunal on the basis of the evidence and pleadings before it concluded that the deceased Smt. Kshama Rani had died due to the injuries sustained by her in the accident in question that took place due to the rash negligent driving of vehicle bearing registration HR – 38 T – 5979 by respondent no. 1.

The claimants/appellants are the 62 year old husband, and the two major sons aged 31 and 33 years, of the deceased Smt. Kshama Rani. The first submission made on behalf of the appellants is that appellants No.2 and 3 (31 and 33 years of age) sons of the deceased were also entitled to the consortium. However, learned counsel is unable to show any judgment in support of his submission that grown sons, who are not dependent on the deceased are also entitled to consortium. Second contention of learned counsel is that the Tribunal has taken income of the deceased on the lower side. The impugned Award is not assailed on any other ground.

I have heard ld. Counsel for the appellants as also perused the record.

A perusal of the Award shows that the deceased was a retired JBT Teacher and was drawing a pension of Rs.33,600/- per month as evident from revised pension orders Ex. P3 and P4. It was also submitted by learned counsel for the claimants before the Tribunal that she was having agricultural land as is evident from Jamabandis for the year 2014-15 as well as 2015-16 Ex. P23 and P24 respectively. The Tribunal on the basis of income tax return for the year 2019-20 Ex.P16 which showed the gross total income of the deceased to be Rs.4,97,967/-, took the monthly income of the deceased to be Rs.40,000/-. Though the appellants no. 2 and 3 were admittedly independent and having their own sources of income, yet the ld. Tribunal took them to be dependents and made a deduction of 1/3rd towards personal expenses and calculated annual loss of dependency as 26,667×12 = 3,20,004/–. Keeping in view the age of the deceased the multiplier of seven was applied and compensation was accordingly calculated to be Rs.22,40,028/–. Further, appellant no.1 was allowed Rs.40,000/- on account of loss of consortium; and 15,000/- each was granted on account of funeral expenses and loss of estate. As such, total compensation of Rs.23,10,028/– was awarded to the appellants herein along with interest @ 7.5% per annum from the date of filing claim petition till realisation.

No doubt, Chapter XII of the MV Act, 1988 is a beneficial legislation, yet, as cautioned by the Hon’ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is that the compensation accorded be 'just'. In my considered view, ld. Tribunal has awarded a very 'just compensation' in the facts of the present case, which is in accordance with law laid down by the Hon'ble Supreme Courtand therefore, does not warrant the interference of this Court for the meagre sum of Rs. 80,000/-. In case of **(1994) 2 SCC 176 titled as 'KSRTC vs Susamma Thomas'**, the Hon'ble Supreme Court has held that a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

Dismissed.

(NIDHI GUPTA)
JUDGE

15.12.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No