

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 5020/2016

Date of decision:19/12/2022

Ashok Kumar

.....Appellant

Vs.

Taufiq and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. SK Yadav, Advocate for the appellant
 Mr. Vinod Gupta, Advocate for the respondent

Nidhi Gupta, J.

This appeal has been filed by Ashok Kumar- son of the deceased-claimant no.4, seeking partial setting aside of the Award dated 5.2.2016 whereby the appellant has not been considered a dependent of the deceased Kesho Ram, and further prays that 50% of the compensation amount of Rs. 14,54,688/- be granted to him. Award dated 5.2.2016 has been passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') in MACT Case No.39/22.7.2013 in a petition u/s 166 of the Motor Vehicles Act filed by the proforma respondent nos. 4-6 herein, and the appellant. The compensation of Rs. 14, 54,688/- was awarded on account of

death of Kesho Ram, father of appellant, who was 58 years old at the time of death, as evident from copy of PMR Ex. P2.

On basis of the material before it, the Id. Tribunal held that the deceased Kesho Ram had died in a motor vehicular accident that took place on 19.6.2013 due to rash and negligent driving of Dumper bearing registration NO. HR 74A-0962 (hereinafter referred to as 'the offending vehicle') by respondent no.1-Taufiq. The offending vehicle was owned by respondent no.2-Sahbuddin and insured by respondent no.3. The respondents were held liable to pay the compensation jointly and severally alongwith interest @ 9% from the date of filing of the petition till payment.

It is submitted by the learned counsel for the appellant that appellant is unemployed son of the deceased yet the Tribunal did not consider the appellant to be a dependent of the deceased. It is further submitted that the deceased is an Ex-Army personnel and was 58 years old at the time of his death and future prospects @ 15% ought to have been given and Tribunal was in error in awarding future prospects @ 10% only.

In response, it is submitted by the learned counsel for respondent Insurance Company that deceased was an Ex-Serviceman and was getting pension. Claimant no.1 was the widowed daughter-in-law of the deceased, and claimants no. 2 and 3 being the minor granddaughters of the deceased were considered to be the dependents of the deceased and accordingly, Id. Tribunal had held them entitled for the entire compensation amount. Appellant / claimant no. 4 was not considered a dependent by the Tribunal as he was the major son of the deceased and lived independently. It is further submitted that deduction of 50% ought to have been made and not 1/3rd as erroneously deducted by the Tribunal, as the claimant no.1-widowed

daughter-in-law of the deceased was the only dependent whereas rest of the claimants are daughters of the son of the deceased and therefore, not Class-I legal heirs. It is very vehemently submitted that the Id. Tribunal was not in error in not considering the appellant to be a dependent of the deceased.

I have heard learned counsel for the parties.

A perusal of the Award, in particular para 11 thereof, shows that the appellant as PW-1 has admitted that he had independent income of Rs.6000-7000/- per month. The appellant as PW1 has further deposed that he was staying separately from the other claimants and admits to living separately during the lifetime of the deceased also. Ld. Tribunal has noticed in the impugned Award that appellant as PW1 has himself stated that proforma respondent nos. 4-6 herein/ claimant nos. 1-3, being the widowed daughter-in-law of the deceased and the minor granddaughters of the deceased, were staying with the deceased and were dependent on him. Even now Id. Counsel for the appellant is unable to controvert this factual situation, or show anything to the contrary. Further, admittedly, as it is not in dispute that the other claimants were entirely dependent on the deceased and lived with him and now had no source of income. As such, I find no error in the finding of the learned Tribunal that the appellant was not a dependent upon the deceased, and therefore, held not entitled to the compensation.

Present appeal is therefore, dismissed as above.

19.12.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No