

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2310/2020(O&M)
Date of decision:28/03/2023

Sedesh @ Sudesh and another

.....Appellants

Vs.

Raj Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ranjit Saini, Advocate for the appellants.

Nidhi Gupta,J.

CM 6487-CII/2020

Since there is delay of 605 days in filing the present appeal, aforesaid application u/s 5 of the Limitation Act, 1963 has been filed seeking condonation of said delay. It is averred therein that due to death of their only son, claimants/appellants were badly depressed and could not properly instruct their counsel to file appeal and by the time their counsel advised them to file appeal for enhancement of compensation, delay of 605 days had already occurred.

For the reasons stated, application is allowed and delay of 605 days is condoned.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.8.80 lakhs awarded by the Motor

Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide Award dated 12.2.2018 in a claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

Ld. Tribunal on the basis of the pleading and evidence before it concluded that the deceased Vikas @ Vicky died due to injuries suffered by him in a motor vehicular accident that took place at about 7.30 AM on 3.11.2016 due to rash and negligent driving of Bus bearing registration NO. HR-46D-8931 (hereinafter referred to as 'the offending vehicle') by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein. Claimants/appellants are parents of the deceased Vikas @ Vicky. Ld. Tribunal awarded compensation as above along with interest @ 9% per annum from the date of filing of the claim petition till realization. The liability to pay the compensation has been fastened jointly and severally upon the respondents 1 to 3.

Ld. Counsel seeks enhancement primarily on the ground that income of the deceased has been taken only Rs.5,000/- per month. It is submitted that deceased was student of 10+2 and was an excellent football player and imparting coaching to children and earning Rs.10,000/- per month from coaching children in the Football Nursery/Academy. It is submitted that accordingly Ld. Tribunal was in error in taking the income of the deceased as Rs.5,000/- per month. It is further submitted that appellants had spent Rs.1.50 lakhs on treatment, transportation and last rites of the deceased and therefore, they are entitled to compensation of Rs.25 lakhs along with interest @ 18% per annum.

No other argument has been raised.

Heard ld. Counsel.

Perusal of the record of the case shows that though it was pleaded case of the appellants that the deceased was earning Rs.10,000/- per month from imparting Football coaching to children in Football Nursery/Academy at Village Swargthal, Tehsil Gohana, District Sonapat, however, no evidence to prove the alleged income of the deceased was led by the appellants. Further as per Post Mortem Report Ex.P13, age of the deceased was proved to be 19 years at the time of his death. As per Ex.R16, detailed marks card of the deceased it was shown that the deceased was studying in 10+2. Accordingly, I find no error in assessment of notional income of the deceased as Rs.5,000/- per month, as assessed by the ld. Tribunal. No minimum wage notification to the contrary has been produced by the counsel for the appellants. Ld. Tribunal has further made addition of 50% as future prospects to the income of the deceased, thus, calculating the income of the deceased as Rs.7,500/- per month. As the deceased was 19 years of age and could at best be said to be self-employed, in actual fact, addition of 40% should have been made towards future prospects as per law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. Be that as it may, ld. Tribunal has made a deduction of 50% as deceased was bachelor and multiplier of 18 has correctly been applied. Ld. Tribunal has further granted Rs.15,000/- towards loss of estate and Rs.15,000/-, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium, thus holding the claimants entitled to a total compensation of Rs.8.80 lacs along with interest @ 9% per annum.

In my view the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for

interference is made out. No doubt Chapter-12 of the Motor Vehicles 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 is “just”. In my considered view, in the present case, the learned Tribunal has awarded a very “just” compensation, which is in accordance with the law laid down by the Hon’ble Supreme Court and therefore does not warrant the interference of this Court. In case of **KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176**, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

For the reasons stated above the present appeal stands dismissed on merits as well as on the ground of delay.

28/03/2023
Joshi/ps-I

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No