IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

231 **FAO-959-2019 (O&M)**
Date of decision: 04.05.2023

Smt. Renu Bala & Others
...Appellant(s)

Vs.

Mohd. Yousuf Lone & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kulwant Singh Dhanora, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-2934-CII-2019

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 1145 days in filing the appeal.

The reasons cited in the application are that the appellants were not aware of the limitation of filing the appeal and they engaged the present counsel on 16.09.2018. It is further submitted that the delay in filing the appeal is beyond the control of the appellants.

No ground is made out to condone such inordinate delay of 1145 days in filing the appeal. Present application accordingly, stands dismissed.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.28,00,398/- granted by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the learned Tribunal") vide Award dated 05.05.2015 passed in

MACT/61/2014 filed under Sections 140, 141 & 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Three claimants are the widow, two major sons and mother, pro-forma respondent, of deceased-Ravinder Kumar Kwatra @ Ravi Kwatra.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Ravinder Kumar Kwatra @ Ravi Kwatra had died due to injuries suffered by him in a motor vehicular accident that took place on 21.01.2014 due to rash and negligent driving of truck bearing registration No.JK-05B-0810 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 9% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds:

a) that learned Tribunal has granted interest @ 9% per annum whereas the same should be 18%;

b) that learned Tribunal has failed to appreciate that the deceased was 51 years of age at the time of accident and has "awarded very less multiplier".

c) that learned Tribunal has assessed income of the deceased on lower side;

d) that only 15% future prospects have been added which is on lower side.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. Perusal of record of the case shows that though it was the pleaded case of the appellants before the learned Tribunal that deceased was earning Rs.1,00,000/- per month, however, as per Income Tax Return of the deceased (Exhibit P12) income of the deceased, after deduction of income tax, was depicted therein as Rs.2,81,992/-. As per ITR Exhibit P12, date of birth of the deceased was shown therein to be 22.09.1962. However, as per post-mortem report, as also on the basis of testimony of PW3/claimant No.1/appellant No.1 herein, age of the deceased was stated to be 52 years at the time of death. Accordingly, learned Tribunal took age of the deceased to be between 51–55 years. Learned Tribunal accordingly, made an addition of 15% to the income of the deceased by way of future prospects in accordance with judgment of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**. Deceased being 51 to 55 years of age, learned Tribunal correctly applied multiplier of 11. Further, though claimants were three in number, yet, learned Tribunal held that dependents on the deceased were four in number as, mother of the deceased was impleaded before the learned Tribunal as proforma respondent. Accordingly, learned Tribunal made deduction of $1/4^{th}$.

7. Learned Tribunal further granted Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards transportation and funeral expenses. Thus, coming to total compensation of Rs.28,00,398/-. Compensation granted by the Learned Tribunal is depicted in tabular form, as under:-

HEADS	**AMOUNT**
Income	Rs.2,81,992/- per annum
Future prospects (15%)	Rs.2,81,992/- + Rs.42,298.8/- (rounded off to Rs.42,299/-) = Rs.3,24,291/-
Deduction (1/4th)	Rs.3,24,291/- - Rs.81,072.75/- (rounded off to Rs.81,073/-) = Rs.2,43,218/-
Multiplier (11)	Rs.2,43,218/- x 11 = Rs.26,75,398/-
Loss of consortium	Rs.1,00,000/-
Transportation & funeral expenses	Rs.25,000/-
Total	**Rs.28,00,398/-**

8. I find no error whatsoever in the above compensation as granted by the learned Tribunal. I find no case is made out that merits interference with the impugned Award. I find the compensation awarded to the appellants to be just and fair in the facts and circumstances of the case. No doubt Chapter-12 of the Act 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. Moreover, compensation awarded upon the death of a near and dear loved one cannot be made a market negotiation, where every penny has to be calculated and drawn. Hon'ble Supreme Court in **State of Haryana Vs. Jasbir Kaur, (1999) 1 SCC 90 and Divisional Controller K.S.R.T.C. Vs. Mahadev Shetty, (2003) 7 SCC 197,** has held that the amount of

compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. Thus, 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 Vs. 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.

9. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

04.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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