IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

277 **FAO-1589-2020 (O&M)**
Date of decision: 17.05.2023

Saabrun & Others
...Appellant(s)
Vs.
Mahendra Singh & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ankit Grewal, Advocate for
Mr. Vaibhav Jain, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-4905-CII-2020

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 44 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.18,84,400/- granted by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as "the learned Tribunal") vide Award dated 05.09.2019 passed in MVA Petition No.36 of 2018 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The seven claimants are the widow, five minor children, and mother of deceased-Sabir who was 32 years old at the time of death.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Sabir had died due to injuries suffered by him in a motor vehicular accident that took place on 15.05.2018 at about 2:00 pm due to rash and negligent driving of Tata-407 bearing registration No.HR-38U-2955 (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 @ 8% 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. Learned Tribunal further made a deduction of 40% from the compensation as awarded hereinabove due to contributory negligence on part of the deceased i.e. Rs.30,24,000/- - Rs.12,09,600/- = Rs.18,14,400/-.

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

a) that income of the deceased has been taken as only Rs.6,000/- per month. It has been pleaded in para 3(i) of Grounds of Appeal that the deceased was running milk dairy and was earning Rs.40,000/- per month. It is submitted that the deceased used to sell 70 litres of milk per day and therefore, income of the deceased has been taken on very much lower side as only Rs.6,000/- per month;

b) that learned Tribunal has made a deduction of $1/4^{th}$ towards personal expenses whereas the same should be $1/6^{th}$;

c) that only Rs.40,000/- has been awarded towards loss of consortium; whereas Rs.40,000/- ought to be granted to each of the claimants;

d) that finding of contributory negligence on part of the learned Tribunal is totally wrong and illegal and entire compensation should have been awarded to the appellants.

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

5. I have heard learned counsel for the appellants.

6. Brief facts of the case as discernible from the record, are that on the date of accident i.e. 15.05.2018 at about 2:00 pm, the deceased along with his wife/appellant No.1 was coming on his motorcycle bearing registration No.HR-51T-4617 from NH-5, Faridabad after supplying milk, towards his house. Appellant No.1 was pillion riding behind the deceased. When they reached near T-point Faridabad near Banana Godown, the offending vehicle being driven by respondent No.1 came and hit the motorcycle of the deceased from back side due to which the deceased along with his motorcycle came under the offending vehicle, whereas the appellant No.1 was thrown away on the other side of the road. The deceased died on the spot. On the statement of appellant No.1, FIR No.280 dated 15.05.2018 was registered under Sections 279 and 304-A IPC.

7. It has come on record that at the time of accident, the deceased was driving his motorcycle which was loaded with two milk

drums, and on which the appellant No.1 was pillion rider. Admittedly, the deceased did not have a valid driving licence. This fact has also been admitted by appellant No.1/PW1/widow of the deceased during her cross-examination. She has further admitted that she has not seen driving licence of the deceased. Even subsequently, despite the fact that specific question regarding driving licence of the deceased was put to appellant No.1 yet driving licence of the deceased was not produced by the appellants. In such circumstances, there is no option left, but to conclude that clearly the deceased did not possess a valid driving licence on the date of accident, to drive the motorcycle; and was also using his motorcycle for commercial purposes i.e. to supply milk which is also in violation of the terms and conditions of the Registration Certificate of the said motorcycle. Accordingly, in view of the above admitted facts, I find no error in deduction of 40% made by the learned Tribunal on account of contributory negligence on part of the deceased in view of judgment of Patna High Court in **National Insurance Co. Ltd. Vs. Musmat Singasan Devi Law Finder Doc ID # 1240489** and of Madras High Court in **Managing Director, Tamil Nadu State Trans. Co. Ltd. Vs. Abdul Salam Law Finder Doc ID # 380518.** Relevant part of **Abdul Salam (supra)** is reproduced hereinbelow:-

> "11. Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling

of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in the two wheelers has become a regular sight. Even though the highway patroling is available but it is a rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the City; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

12. When three persons travelled in a motor cycle which is meant for two persons, this court is of the view, the conduct of the persons who travelled in such a manner are liable for contributory negligence; especially when their action is contrary to the statute.

13. Hence we hold that the deceased was liable for 50% of the contributory negligence and consequently 50% of the

compensation is deducted towards contributory negligence...”

8. As regards quantum, perusal of the record of the case shows that it is the pleaded case of the claimants before the learned Tribunal that the deceased was a milk vendor and was earning Rs.40,000/- per month. No doubt, in support of their contention, the claimants had produced PW3-Satpal, PW4-Mukesh Kumar and PW5-Janak Raj Dua all of whom had deposed that the deceased used to sell milk to them. However, no documentary evidence whatsoever was produced by the claimants in form of bank statements, account book, milk diary, register of customers etc., either before the learned Tribunal, or before this Court, to prove income of the deceased. Accordingly, I find no error in the notional income of the deceased as determined by learned Tribunal as Rs.15,000/- per month.

9. Undisputedly, age of the deceased was 32 years at the time of death. Learned Tribunal accordingly, correctly made an addition of 40% as per law laid down by Hon’ble Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680;** and correctly applied multiplier of 16 as per law laid down by Hon’ble Supreme Court in case of **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104.** As there were six claimants, learned Tribunal correctly made a deduction of 1/4th towards personal expenses.

10. In tabular form compensation awarded by the learned Tribunal is as follows:-

Heads	**Amounts**
Income	Rs.15,000/- per month
Future prospects (40%)	Rs.15,000/- + Rs.6,000/- = Rs.21,000/-
Deduction (1/4th)	Rs.21,000/- - Rs.5,250/- = Rs.15,750/-
Annual income	Rs.15,750/- x 12 = Rs.1,89,000/-
Multiplier (16)	Rs.1,89,000/- x 16 = Rs.30,24,000/-
Deduction of 40% towards contributory negligence	Rs.30,24,000/- - Rs.12,09,600/- = Rs.18,14,400/-
Conventional heads	Rs.70,000/-
Total	**Rs.18,84,400/-**

11. In view of the discussion above, 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.

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

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

17.05.2023
Sunena

(Nidhi Gupta)
Judge

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