IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247 **FAO No.1708-2020**
Date of decision: 31.01.2023

Kiran Devi & Others ...Appellant(s)

Vs.

Chhote Lal& Others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Anjali, Advocate for
Mr. Devender Arya, Advocate for the appellants.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,90,800/- awarded by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as "the learned Tribunal") vide Award dated 09.12.2019 passed in MACP Case No.36 of 2018 filed under Section 166 of Motor Vehicles Act, 1988. Appellants/claimants before the learned Tribunal are parents, major sisters (Ravina and Ritu) and brother (Yogender) of deceased-Ravi Kumar.

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Ravi Kumar had died due to the injuries suffered by him in a motor vehicular accident that took place on 22.02.2018 due to the rash and negligent driving of bus bearing registration No.RJ-14PA-7585 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.4 herein. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization.

Learned Tribunal took age of the deceased as 23 years at the time of accident on the basis of Exhibit P32 which is the original matriculation certificate of the deceased. Appellants/claimants claimed that the deceased was earning Rs.20,000/- per month, however, as no proof of income was attached, therefore, notional income of deceased was assessed as Rs.9,000/- per month, to which 40% was added towards future prospects. 50% was deducted by way of personal expenses and multiplier of 18 was applied. Accordingly, compensation was calculated as hereinbelow:-

a)	Loss of income to the family	Rs.13,60,800/-
b)	Funeral expenses	Rs.15,000/-
c)	Loss of Estate	Rs.15,000/-
	Total amount of compensation	**Rs.13,90,800/-**

The only ground on which learned counsel for the appellants seeks enhancement of compensation is that the learned Tribunal is in error in taking income of the deceased as only Rs.9,000/- per month whereas as per Minimum Wage notification at the relevant time, income ought to have been taken as Rs.9,368/- per month.

It is further submitted that nothing has been awarded by way of consortium to sisters and brother of deceased.

No other submission is made on behalf of the appellants.

A perusal of the impugned Award shows that the learned Tribunal has considered the case in great detail, and as per the law laid down by the Hon'ble Supreme Court. Further, in ***Civil Appeal No.3483 of***

2008 "Sarla Verma & Others Vs. Delhi Transport Corporation & Another", Hon'ble Supreme Court has held as follows in Para 15 of the said judgment, reproduced hereinbelow:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

In view of the legal position as noticed above, consortium is not admissible to major siblings of the deceased.

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. 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. 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.

Accordingly, for the reasons aforestated, I find no error in the impugned Award. The present appeal is therefore, dismissed.

31.01.2023 **(Nidhi Gupta)**
Sunena **Judge**

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