

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-1551-2022 (O&M)
Date of decision: 22.05.2023

Raji Ram (since deceased) through LRs
...Appellant(s)

Vs.

Satish Kumar & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vivek Suri, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.27,50,595/- granted by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the learned Tribunal") vide Award dated 28.01.2022 passed in MACP Case No.376 of 2019 filed under Sections 140, 141 and 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are the widow and 30-year-old son of deceased-Raji Ram.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Raji Ram had died due to injuries suffered by him in a motor vehicular accident that took place on 04.07.2019 due to rash and negligent driving of truck bearing registration No.HR-55N-1266 (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 @ 7.5% 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 on the grounds:

a) that the deceased had remained in coma for a period of over one year from 04.07.2019 to 28.06.2020 yet learned Tribunal has granted only Rs.1,00,000/- towards attendant charges. It is submitted that learned Tribunal has not considered the bills Exhibit P21 to Exhibit P25 and from Exhibit P108 to Exhibit P113 issued by Khanak Patient Care, Karnal with respect to attendant charges amounting to Rs.3,46,500/-;

b) that the deceased was an agriculturist and was earning Rs.30,000/- per month from agriculture and dairy farming. However, income of the deceased has been assessed as only Rs.8,827/- per month which is on the 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 no doubt the appellants had produced the above said bills Exhibit P21 to Exhibit P25 and Exhibit P108 to Exhibit P113 amounting to Rs.3,46,500/- for attendant charges, however, admittedly the said bills were not proved in accordance with law. Admittedly, no witness was produced by the

appellants to prove the said bills. It is the case of the appellants that they had arranged a male nurse to take care of the deceased during his long period of coma from 04.07.2019 to 28.06.2020, however, even the said male nurse(s) were not examined to prove the above said bills. Nor any accountant or Doctor from Khanak Patient Care, Karnal, was examined to prove the said bills. Accordingly, I find no ground is made out to enhance the amount of Rs.1,00,000/- granted by the learned Tribunal towards attendant charges.

7. As regards income from agriculture, it is established position in law that income from agriculture and dairy farming is not calculated while computing compensation payable under the Act as the said income is still available to the claimants even after death of the deceased. Accordingly, I find no error in the assessment of the notional income of the deceased as made by the learned Tribunal on the basis of the relevant Minimum Wage Notification dated 15.02.2019 as Rs.8827/- per month.

8. Further, even though claimant No.2 is major son of the deceased yet learned Tribunal made a deduction of only 1/3rd towards personal expenses. On this basis dependency was assessed as Rs.4,94,340/- (Rs.5,885/- x 12 x 7). As deceased was more than 60 years of age, learned Tribunal applied multiplier of 7. Learned Tribunal has further granted Rs.15,000/- for loss of estate; Rs.15,000/- for funeral expenses and Rs.80,000/- towards loss of consortium. Thus, granting a total compensation of Rs.6,04,340/-.

9. The appellants had also produced medical bills Exhibit P4 to Exhibit P7 to Exhibit P107 for a sum of Rs.23,28,320/-. Perusal of impugned Award shows that it has been conceded by learned counsel for the appellants before the learned Tribunal, that bills Exhibit P21 to Exhibit P25 are for attendant charges, and the remaining bills amounting to Rs.20,46,255/-are for transportation and medical expenses. Learned Tribunal had duly reimbursed Rs.20,46,255/-for the bills towards transportation and medical expenses. However, as already discussed above, as the bills in respect of Attendant charges were not proved by the appellants, learned Tribunal awarded a sum of Rs.1,00,000/- towards attendant charges. Thus, totalling to a compensation of Rs.27,50,595/- along with interest @ 7.5% per annum.

10. In my view, the above facts amply demonstrate that 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.

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

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

22.05.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No