IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

259 **FAO-1498-2022 (O&M)**
Date of decision: 04.05.2023

Rajbala
...Appellant(s)

Vs.

Rishi Kumar & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Gupta, Advocate
for Mr. Gourav Verma, Advocate
for the appellant.

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NIDHI GUPTA, J.

CM-5732-CII-2022

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 7 days in filing the appeal.

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

MAIN CASE

Present appeal has been filed by the claimant no.1 seeking enhancement of compensation of Rs.9,24,744/- granted by Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as "the learned Tribunal") vide Award dated 08.12.2020 passed in MACP/393/2019 filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants were the widow, two major sons aged 30 and 31 years, and one major married daughter aged 31 years, of the deceased-Jagdish.

Sole Appellant before this Court is widow of the deceased/claimant No.1.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Jagdish had died due to injuries suffered by him in a motor vehicular accident that took place on 12.06.2019 due to rash and negligent driving of vehicle bearing registration No.HR-79A-9957 (hereinafter referred to as 'the offending vehicle'), being driven and owned by respondent No.1, and insured by respondent No.2. 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 appellant seeks enhancement of compensation on the sole ground that income of the deceased has been taken on lower side as only Rs.8,000/- per month. It is submitted that the appellant had led substantial evidence before the learned Tribunal to prove that the deceased was earning Rs.40,000/- per month from his shop, and sale and purchase of cattle. It is submitted that therefore, income of the deceased has been taken on lower side.

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

5. I have heard learned counsel for the appellant.

6. Perusal of record of the case shows that age of the deceased was determined to be 54 years at the time of death on the

basis of his Aadhaar card (Exhibit P8) wherein his year of birth was reflected as 1964. Learned Tribunal further held that claimants No.2 and 3 being major sons of the deceased and claimant No.4 being major married daughter of the deceased could not be taken as dependent on their deceased father.

7. Though it was the pleaded case of the claimants before the learned Tribunal that deceased was earning Rs.40,000/- per month from his shop and sale or purchase of cattle, however, claimants led no evidence in support of the said assertion. No documentary proof or any Income Tax Return or bank account statement was produced by the claimants to prove the alleged income of the deceased. Accordingly, learned Tribunal assessed notional income of the deceased as Rs.8,827.40/- (rounded off to Rs.8,830/-) on the basis of Notification vide letter No.IR-2/2019/6336-6465 dated 15.02.2019 issued by Government of Haryana through Labour Commissioner, Haryana. Even now nothing has been produced by the appellant to prove alleged income of the deceased. Accordingly, I find no error in the notional income as assessed by the learned Tribunal.

8. Further, as there was only one dependent on the deceased Learned Tribunal made a deduction of 1/3rd towards personal expenses, and calculated annual dependency of the deceased as Rs.70,640/-. Learned Tribunal further applied multiplier of 11, thus, calculating total compensation to Rs.7,77,040/-. Learned Tribunal also

made addition of 10% towards future prospects; and granted Rs.70,000/- under conventional heads.

9. Compensation awarded by the learned Tribunal to the claimants is depicted in tabular form, as follows:-

HEADS	**AMOUNT**
Income	Rs.8,830/- per month
Annual income	Rs.8,830/- x 12 = Rs.1,05,960/-
Deduction (1/3rd)	Rs.1,05,960/- - Rs.35,320/- = Rs.70,640/-
Multiplier (11)	Rs.70,640/- x 11 = Rs.7,77,040/-
Future prospects (10%)	Rs.7,77,040/- + Rs.77,704/- = Rs.8,54,744/-
Loss of estate & funeral expenses	Rs.30,000/-
Loss of consortium	Rs.40,000/-
Total	**Rs.9,24,744/-**

10. Accordingly, 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 appellant 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.

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

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