IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **FAO-2466-2019 (O&M)**

Date of decision: 26.05.2023

Satta & Others

...Appellant(s)

Vs.

Sukhdeep Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok K. Sharma (Bhana), Advocate for the appellants.

Mr. Vijay Kumar Garg, Advocate for respondent No.3/Insurance Company.

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NIDHI GUPTA, J.

CM-7930-CII-2019

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 345 days in filing the appeal.

No ground is made out to condone such inordinate delay of 345 days in filing the appeal.

Present application accordingly stands dismissed.

MAIN APPEAL

Mr. Vijay Kumar Garg, Advocate appears on behalf of respondent No.3 and files **Vakalatnama** which is taken on record.

2. Present appeal has been filed by Legal Representatives of claimant-Tulsi against composite Award dated 24.11.2017 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as "the learned Tribunal") whereby claimants' MACT Case No.18 of 2016 was dismissed.

3. Brief facts of the case are that the said claim petition was filed by the sole claimant – Tulsi, on account of death of his son deceased-Jagdish in a motor vehicular accident that occurred on 28.11.2015. However, during pendency of the appeal, Tulsi had expired and therefore, his LRs who are brothers and sisters of deceased-Jagdish maintained the claim petition/have filed the present appeal.

4. Admittedly, appellant No.1 Satta is 56 years old, appellant No.2 Beda is 51 years old, appellant No.3 Oma is 59 years old, all being sons of Tulsi/brothers of the deceased Jagdish. Appellant No.4 Rajo is 64 years old, appellant No.5 Meena is 41 years old and appellant No.6 Kailasho is 53 years old all of whom are daughters of claimant-Tulsi/sisters of deceased-Jagdish, and all of whom are married and happily settled in their respective matrimonial homes.

5. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the accident in question had taken place on 28.11.2015 due to rash and negligent driving of truck bearing registration No.RJ-04GA-4368 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. However, learned Tribunal held that the claimants were not entitled to any compensation on account of death of Jagdish in the said accident having been "*not found dependent upon income of the deceased*".

6. It is submitted by learned counsel for the appellants that the learned Tribunal was in error in not awarding compensation to the appellants for the above said reasoning as appellants being brothers and sisters of the deceased were entitled to compensation.

7. No other argument has been raised by learned counsel for the appellants.

8. Heard.

9. Perusal of the record of the case reveals that learned Tribunal held that age of the deceased was 32 years on date of accident. Learned Tribunal found that the claimant had failed to prove any income of the deceased. Learned Tribunal further found that as per evidence of PW4, none of the siblings of the deceased/appellants before this Court, were dependent upon income of the deceased. Learned Tribunal took notional income of the deceased as Rs.6,000/- per month and calculated total dependency to be Rs.8,06,400/-. However, as dependency of the appellants could not be proven on record, accordingly, learned Tribunal held them not entitled to any compensation. In this regard, findings of learned Tribunal are contained in Paras 15 to 17 of the impugned Award which are reproduced hereinbelow:-

> "15. Coming to **second claim petition**; the age of deceased was 32 years at the day of accident on 28.11.2015. However, claimants have failed to prove age of deceased by way of documentary proof. Further they did not prove any income of deceased. As far as dependency is concerned; although father has instituted claim petition but he died during pendency of claim petition. Unquestioned, mother being

parents is usually taken into consideration under dependency. Unfortunately, claimant Tulsi being father also died leaving behind his other sons and daughters. It is worth mentioning here that neither age of father nor other siblings of deceased have been disclosed in the petition and so it could not be established that whether siblings are younger to the deceased or they were dependent upon income of deceased. However, as per evidence of PW4, no-one sibling is found dependent upon income of deceased.

16. It is further made clear that claimants have entirely failed to produce any documentary proof showing income of deceased. However, it has been pleaded that deceased was earning Rs.25,000/- due to running business of wooden merchant, but nothing substantial has brought on record to prove income of deceased. In this way, fixed income of deceased cannot be taken more than Rs.6000/- per month in addition to future prospects. Since deceased was below the age of 40 years, therefore, future prospects to the extent of 40 percent shall be applicable. If income is computed, then it comes to Rs.8400/- per month. He died issue less and unmarried leaving behind father and elder siblings, therefore, 50 percent deduction on account of his personal livings and expenses would be applied and then monthly income comes to Rs.4200/-. Since, he died in the age of 31-35, therefore, multiplier of 16 would be applied in view of **Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and another AIR 2009 Supreme Court 3104.** By applying multiplier of 16, the exact assessment of compensation would come to {50400 X 16} Rs.8,06,400/-.

17. However, it has been observed in **Sarla Verma's case (supra)** "*the assessment of extent of dependency depends on examination of the unique situation of the individual case.*

Valuing the dependency or the multiplicand is to some extent and arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by "multiplier" to arrive at the loss of dependency." 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. Here surviving members were father and elder siblings and no-one found Dependent upon income of deceased Jagdish. Thus, question of dependency of Tulsi being father has not been proved on record by PW4 in any manner. Accordingly, second claimants are not entitled to any compensation on account of death of Jagdish in a motor vehicular accident having been not found dependent upon income of deceased and thus, issue no.2 is decided against second claimants."

10. Learned counsel for the appellants is unable to dispute the above said facts and findings of the learned Tribunal, nor has produced any evidence before this Court to prove dependency of the appellants upon income of the deceased. Thus, as per law laid down by Hon'ble Supreme Court in **"New India Assurance Co. Ltd. Vs. Vinish Jain & Others" Law Finder Doc ID # 977386** and this Court in **(P&H) Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136 and Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,** major children of the deceased would not be

entitled to compensation. In the present case, appellants are not even the major sons, but are the major elder brothers and sisters of the deceased. It is established position in law that in order to be entitled for compensation, pecuniary dependency of the claimants upon the income of the deceased has to be proven by the claimants. Admittedly, in the present case, no such dependency has been proved by the claimants/appellants.

11. In my view, the above facts amply demonstrate that no case is made out that merits interference with the impugned Award. 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 opinion, in the present case, the learned Tribunal has taken a very fair, just and rational view, 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** on grounds of delay as well as on merits.

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

26.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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