IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3419/2022 (O&M)

Date of decision:01/03/2023

Tejinder Singh and others

………………Appellants

Vs.

National Insurance Company Limited and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Umesh Kumar Kanwar, Advocate for the appellants.

Nidhi Gupta, J.

CM 9611-CII/2022.

Since there is delay of 1498 days in filing the present appeal, aforesaid application u/s 5 of the Limitation Act has been filed seeking condonation of said delay.

For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.6,06,000/- granted vide Award dated

27.2.2018 passed by Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal') in MACP No.69/2017 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants/appellants are major brothers and sister of the deceased Satnam Singh.

Ld. Tribunal on the basis of the pleadings and evidence before it concluded that the deceased Satnam Singh had died due to injuries received by him in a motor vehicular accident that took place on 28.1.2017 due to rash and negligent driving of Zen Car bearing Registration NO. PB-07-R-2462 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.2, owned by respondent no.3 and insured by respondent no.1 herein. Ld. Tribunal granted compensation as above along with interest @ 7.5% per annum from the date of filing of claim petition till realization. The driver, owner and insurer of the offending vehicle were jointly and severally held liable to pay the compensation.

It is submitted by the ld. Counsel for the claimants that the compensation awarded deserves to be enhanced as the deceased was earning Rs.49,500/- per month as he was doing agriculture farming and dairy farming. It is submitted that despite the fact that cogent evidence was led before the Tribunal with regard to income of the deceased, his income has been assessed as only Rs.6000/- per month. It is further submitted that nothing has been granted by way of future prospects.

It is further submitted that deduction of 50% towards personal and living expenses of the deceased was also excessive as he was not spending much money upon himself and he was very ambitious person. It is also stated that interest has been awarded @ 7.5% per annum whereas the same should be 9% per annum. It is also submitted that only Rs.15,000/- has been awarded towards funeral expenses whereas, appellants have spent more than Rs.1.5 lacs on last rites and funeral expenses of the deceased.

No other argument has been raised on behalf of the appellants.

Heard ld. Counsel for the appellants.

Ld. Tribunal has calculated the compensation payable to the appellants in the following manner: -

	Fatal Accident		
	Date of accident	28.01.2017	
Age	33 years		
Occupation and income	Labour		Rs.72,000/- p.a.
Sr.No.	Heads of claim	Amount (Rs.)	
1	Monthly income	6000/-	
2	Total annual income	72,000/-	
3	Deduction1/2 (being unmarried)	72000-36,000= 36,000/-	
4	Multiplicand (annualized)	36,000/-	
5	Multiplier	36,000/- x 16 = 5,76,000/-	
6	Loss of love and affection to claimants.	15,000/-	
7	Funeral expenses	15,000/-	
8	Total	6,06,000/-	

Perusal of the record shows that ld. Tribunal took the age of the deceased to be 33 years as per his Post Mortem Report Ex. P7. As the appellants did not produce any documentary evidence in support of their contention that the deceased had any income from agriculture or dairy farming, and even no documentary proof was produced to show that the deceased owned any agriculture land, ld. Tribunal assessed the notional income of the deceased as Rs.6000/- per month. Since deceased was admittedly bachelor at the time of his death, deduction of 50% was made towards personal and living expenses. Multiplier of 16 was applied as deceased was 33 years at time of death; and therefore, the total dependency was calculated as Rs.5.76 lacs. Rs. 15,000/- each was awarded towards loss of love and affection and funeral expenses respectively.

In my view, argument of the ld. Counsel for the appellants that income from agriculture was not considered while computing income of the deceased does not bear scrutiny as, it is established legal position that income from agriculture and dairy farming is not included while assessing notional income for the purpose of computing compensation payable to claimants under the Act, as claimants are not deprived of either the land or milch cattle and therefore, said income from said sources continues even after the death of the deceased. Thus, there is no loss of agriculture or dairy farming income. Accordingly, I find no error in the assessment of notional income of the deceased as Rs.6000/- per month. Further, deceased being bachelor at the time of his death, 50% deduction has rightly been made by the ld. Tribunal. Claimants being major brothers and sister are not Class I legal heirs. Even compensation awarded under the conventional heads is just and fair in the facts and circumstances of the case.

I find no error in the assessment of compensation made by the ld. Tribunal, as noticed above. 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. 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.

For the reasons stated above, finding no merit in this appeal the same is hereby, dismissed.

01/03/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**