

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 3192/2019(O&M)

Date of decision: 11.05.2023.

Kamlesh and others

.....Appellants

Vs.

Rakesh @ Kaliya and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ganesh Kumar Sharma, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.15,82,000/- granted by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') vide Award dated 21.11.2018 passed in MACP-215/2016 u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Five claimants are widow, three minor children and mother of the deceased Subhash.

Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 17.4.2016 due to rash and negligent driving of Motorcycle bearing registration NO. HR-16N/4906 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 9% per annum from

the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

Ld. counsel for the appellants seeks enhancement of compensation on the ground that claimants had proved on record that the deceased was an agriculturist and was earning Rs.20,000/- per month, however, ld. Tribunal has taken the income of the deceased as only Rs.8000/- per month as that of daily wager. It is submitted that income of the deceased ought to have been taken at least Rs.9000/- per month as per relevant Minimum Wage Notification.

No other argument has been raised.

Heard ld. counsel.

Perusal of the record of the case shows that it was pleaded case of the appellants before the ld. Tribunal that the deceased was having income of Rs.30,000/- per month by doing agriculture work, however, as claimants failed to produce any concrete documentary evidence in support of their contention, ld. Tribunal took notional income of the deceased as that of daily wager as Rs.8000/- p.m. Even before this Court ld. counsel for the appellants has not shown any document or any other evidence to prove occupation or income of the deceased as an agriculturist. Even otherwise, while computing compensation payable under the Act, income from agriculture land and dairy farm is not included, as said income from land/ milch cattle is still available with the claimants even after the death of the deceased. Even the Notification on basis of which it has been submitted by ld. counsel for the appellants that minimum wages ought to have been taken as

Rs.9000/- p.m., has not been produced at the time of hearing. Accordingly, I find no error in the notional income assessed by the Id. Tribunal.

Age of the deceased was depicted as 45 years in the Postmortem Report Ex.P1, however, as per deposition of PW1 appellant no.1 herein/widow of the deceased, deceased was 37 years of age at the time of death. This is also borne out from Ex.P2 copy of Aadhar Card of the deceased wherein his date of birth is mentioned as 1.1.1979. Therefore, age of the deceased was correctly taken as 37 years by the Tribunal. Accordingly, Id. Tribunal correctly made an addition of 40% towards future prospects. As claimants were 5 in number, Id. Tribunal correctly made deduction of 1/4th towards personal expenses; and correctly applied multiplier of 15 in accordance with the judgment of the Hon’ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104**. Ld. Tribunal has further granted Rs.40,000/- towards loss of consortium; Rs.15000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The compensation awarded by the Id. Tribunal is reproduced hereunder in tabulated form: -

Sr.No.	Heads of claim	MACT
1	Income	Rs.8000x12=96,000/- per annum
2	40% future prospects	Rs.38,400/-=1,34,400/-
3	Deduction 1/4 th	Rs.33,600/- =Rs.1,00,800/-
4	Multiplier of 15	Rs.1,00,800x15= Rs.15,12,000/-
5	Loss of consortium	Rs.40,000/-
6	Loss of love and affection	Rs.15,000/-
7	Funeral expenses	Rs.15,000/-
8	Total compensation	Rs.15,82,000/-

I find no error whatsoever in the above compensation as granted by the Id. Tribunal, and find the same 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.

Dismissed.

Application(s), if any, stand disposed of.

11.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No