IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2410/2019(O&M)
Date of decision:28/03/2023

Premo Devi and others

………………Appellants

Vs.

Pargat Singh and others

…………………Respondents

CORAM **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Suresh Kumar Kaushik,Advocate for the appellants.

Nidhi Gupta,J.

CM 7747-CII/2019

Since there is delay of 5 days in filing the present appeal, aforesaid application has been filed seeking condonation of delay.

The delay being insignificant, application is allowed and delay condoned.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.31,51,000/- granted by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide Award dated 16.11.2018 in MACT Case No.23/2017 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts are that the ld. Tribunal on the basis of the evidence and pleadings concluded that the deceased Vijay Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 19.11.2016 due to rash and negligent driving of Car bearing registration No. HR-24-F-8349 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein. Claimants/appellants are widow, three major children, and mother of deceased Vijay Kumar. Ld. Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim petition till realization. Respondents were held jointly and severally liable to pay the compensation.

Ld. Counsel for the appellants seeks enhancement of compensation on the ground that ld. Tribunal has taken the annual income of the deceased as Rs.2,35,250/-. It is submitted that as per ITRs on record as Ex.P3, Ex.P2 and Ex.P1 pertaining to the last three assessment years i.e. 2013-14, 2014-15 and 2015-16, respectively the income of the deceased was shown to be Rs.2,10,000/-, 2,40,000/- and Rs.2,55,750/-. It is submitted that the income of the deceased ought to have been taken as Rs.2,55,750/- as per Ex.P1 (ITR for the assessment year 2015-16), however, ld. Tribunal has taken average of last three years. It is submitted that as per judgment of Hon'ble Supreme Court in **United India Insurance Co.Ltd. v Satinder Kuar @ Satwinder Kaur and others, Law Finder Doc Id # 1729112**, this could not have been done as it has been held therein that "income of the deceased at the time of his death" has to be considered. It is further submitted that nothing has been granted by way of consortium to the appellants/claimants whereas as per above cited case of **Satwinder Kaur** (supra), claimants were entitled to spousal, parental and filial consortium.

No other argument has been raised.

Heard ld. Counsel.

As regards the contention of the ld. Counsel that income of the deceased ought to have been taken as per last ITR, in my opinion, the same cannot be accepted in view of para 7 of 3-Judge Bench of Hon'ble Supreme Court in **Civil Appeal No.7181 of 2015 titled as "ICICI Lombard General Insurance Co. Ltd. Vs. Ajay Kumar Mohanty,** wherein it has been held as under:-

> "7. On perusing the order of the Tribunal, we find merit in the contention of the insurer that while calculating the income in paragraph 10 of its order, the Tribunal has committed an error of computation. The Tribunal has on the basis of the income tax returns for 2007, 2008 and 2009 arrived at an average income of Rs.1,45,231/-. However, the Tribunal has thereafter noted that the average income comes to Rs.2,62,372/-. Ultimately, the Tribunal proceeds on the annual income of Rs.2,22,000/- on the basis of the testimony of the claimant that he was earning Rs.18,500/- per month. This is contradictory. In our view, on the basis of the finding of the Tribunal that the average income of the claimant for the previous three years was Rs.1,45,231/-, it would be necessary to take into account the evidence of PW2 that the disability is to the extent of 55 per cent. In other words, the loss of earning as a result of the aforesaid disability would work out to Rs.79,877/- per year."

Reference may also be made to decision of this Court in FAO 6585/2016 titled **Shriram General Insurance Co. Ltd. v Bholu Khan and others.**In my view there is no error in the assessment of income made by the ld. Tribunal. Accordingly said argument on behalf of the claimants is rejected.

Further perusal of the impugned Award shows that in the claim petition as well as in the Post Mortem Report Ex.P-13, age of the deceased is mentioned as 45 years, however, in the ITRs date of birth of the deceased is mentioned as 25.6.1970 as per which age of the deceased on the date of death comes to 46 years 5 months and 6 days. Though ld. Tribunal has made an addition of 30% towards future prospects, however, as per law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, as the deceased was self-employed, an addition of 25% should have been made towards future prospects. Deceased was a Diploma Holder in Pharmacy and running medical store under the name and style of M/s Sharma Medical Store, Assandh Road, Karnal. As claimants are five in number, ld. Tribunal made a deduction of 1/4th. In my view deduction of 1/3rd ought to have been made as admittedly, claimants 2 to 4 are major children of the deceased and as per law laid down by Hon'ble Supreme Court in ***SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others";*** and of this Hon'ble Court in ***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,*** it has been held that major sons being not dependent on deceased are not entitled to compensation. It is accordingly, held that appellant 2 to 4 (appellant Nos.2 & 3 are major sons and appellant No.4 is major daughter) are not entitled to any compensation. Even nothing has been stated or placed on record to show that they were dependent on the earnings of the deceased. Therefore, deduction of 1/3rd ought to have been made. Further, ld. Tribunal has correctly applied multiplier of 13 as deceased was 46 years of age. Ld. Tribunal has further granted Rs.40,000/- as spousal consortium and Rs.60,000/- on account of loss of love and affection to claimants 2 to 4 and Rs.40,000/- on account of filial consortium as also Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Accordingly, contention of the ld. Counsel that nothing has been awarded towards consortium is rejected.

Ld. counsel during the course of arguments has further admitted that dependency of appellants 2 to 4/major children of the deceased was not proven on record by the claimants.

In my view the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for interference is made out. 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.

In view of these findings, the appeal is hereby dismissed.

28/03/2023 **(Nidhi Gupta)**
Joshi/ps-I **Judge**

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