

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2373 of 2020
Date of decision:16/03/2023

Smt.Shakuntala and others

.....Appellants

Vs.

Sandeep and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.JP Sharma,Advocate for the appellants.

Nidhi Gupta, J.

CM 6555-CII/2020

Since there is delay of 118 days in filing the present appeal,
aforesaid application has been filed seeking condonation of 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 appellants/claimants
seeking enhancement of compensation of Rs.25.27 lacs granted by the
Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the
Tribunal') vide Award dated 7.8.2019 passed in MACT Case No.25/2018 in
a claim petition u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred
to as 'the Act').

Facts in brief are that the Id. Tribunal on the basis of pleadings and evidence before it concluded that the deceased Rajesh died due to injuries suffered by him in a motor vehicular accident that took place on 22.11.2017 due to rash and negligent driving of Alto car bearing registration No. HR-18C-6594 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. Ld. Tribunal awarded compensation as above alongwith 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. Claimants are widow, three minor children, and parents of the deceased-Rajesh.

Ld. Counsel for the appellants seeks enhancement of compensation on the ground that the Id. Tribunal has made a deduction of 1/4th towards personal expenses. It is submitted that keeping in view that the claimants are 6 in number, deduction of 1/6th ought to have been made. It is further submitted that nothing has been granted to minor children towards loss of love and affection. On a specific Court query as to whether consortium has been awarded, Id. Counsel for the appellants admits that it is so awarded.

Perusal of the impugned Award shows that though it had been stated by the claimants before the Id. Tribunal that prior to his death deceased was working as a Driver and also doing labour work and earning Rs.20,000/- per month, however, as no documentary evidence was led by the claimants, accordingly, Id. Tribunal assessed the notional income of the deceased as Rs.13,000/- per month. It is to be noted that in the impugned

Award there is no reference to any Minimum Wage Notification on the basis of which the notional income of the deceased has been so assessed by the Id. Tribunal.

Further, as per testimony of PW1/claimant no.1-wife of the deceased and as per photocopy of the Post Mortem Report, the age of the deceased was taken to be 38 years at the time of his death. Accordingly, future prospects @ 40% were added thus, taking the income of the deceased as $\text{Rs.}13000+5200=\text{Rs.}18,200$. As the claimants were six in number, deduction of $\frac{1}{4}^{\text{th}}$ was made towards personal expenses and therefore, annual income worked out to $\text{Rs. } 2,18,400/- - \text{Rs.}54600 = \text{Rs.}1,63,800/-$. As the deceased was 38 years of age at the time of his death, multiplier of 15 was applied and total loss of dependency was calculated to be $\text{Rs.}24,57,000/-$. Further a sum of $\text{Rs.}40,000/-$ was awarded on account of loss of consortium; $\text{Rs.}15000/-$ on account of loss of estate and $\text{Rs.}15000/-$ on account of funeral expenses.

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. 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. 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.

Dismissed.

16/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No