IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2435/2019(O&M)

Date of decision: 11.05.2023.

Smt. Babli Devi and others

………………Appellants

Vs.

Vinod Dutt and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Chander Shekhar Singhal, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,21,950/- granted by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide Award dated 5.12.2018 passed in MACT Petition No.10 of 2017/2018 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are the mother and two major brothers aged 23-1/2 years and 21 years respectively, of the deceased Sourabh Kumar who was aged 18 years at the time of his death.

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 1.2.2017 due to rash and negligent driving of Bus bearing registration No. HR-58-A-8208 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.4. The Tribunal awarded compensation as above along with interest @ 7.5% 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 of consortium. It is submitted that the Motor Vehicles Act is a beneficial legislation and therefore, consortium of Rs.40,000/- ought to have been awarded to each of the claimants whereas ld. Tribunal has granted only Rs.40,000/- towards consortium.

No other argument has been raised.

Heard ld. counsel.

Perusal of the impugned Award reveals that it was pleaded case of the claimants that the deceased was doing denting/painting work with Sai Motor Garage, Near Chawla Palace on National Highway No.7, Kala Amb-Naraingarh Road, near Naraingarh and was earning Rs.20,000/- per month from the said occupation. Claimants examined PW2 Sunil Kumar who deposed that he was owner of the said Motor Garage and that the deceased was employed with his Motor Garage for last three years and was working as skilled mechanic. However, as the said PW2 did not produce any account books or any other record whatsoever to prove employment of the deceased with M/s Sai Garage, therefore, ld. Tribunal fixed notional income of the deceased as Rs.8280/- per month on the basis of relevant Minimum Wage Notification issued by the State Government. Even now ld. counsel for the appellant has produced nothing before this Court to prove above said employment of the deceased. Accordingly, I find no error in the notional income of Rs.8280/- as assessed by the ld. Tribunal.

After assessing notional income of the deceased, ld. Tribunal awarded compensation as follows:

Sr.No.	Head	Amount
1.	Monthly income	Rs.8280/-
2.	Age	18 years
3	Future prospects	@ 40% = Rs.3312.
4	Monthly income	Rs.8280+1132= Rs.11,592/-
5	Deduction @ 50%	Rs.5796/-
6	Monthly dependency	Rs.11592-Rs.5796/-= Rs.5796/-
7.	Total dependency	Rs.5796x12x18= Rs.12,51,936/-
9.	Loss of love and affection	Rs.40,000/-
10.	Loss of estate	Rs.15,000/-
11.	Transportation and last rites	Rs. 15,000/-
12.	Total compensation	Rs.13,21,936/- rounded off to Rs.31,21,950/-
13.	Interest	@ 7% p.a., from the date of filing of the claim petition till the date of realization.

It was pleaded case of the appellants before the ld. Tribunal that the deceased was 19 years of age at the time of his death, however, as per Postmortem Report, Ex.P6, age of the deceased was mentioned as 18 years. Accordingly, ld. Tribunal took the age of the deceased as 18 years at the time of his death, and correctly made addition of 40% towards future prospects in accordance with the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. As the deceased was admittedly bachelor at the time of his death, ld. Tribunal correctly made deduction of 50% towards personal expenses. As the deceased was 18 years of age, ld. Tribunal correctly applied multiplier of 18. Further, ld. Tribunal granted a total sum of Rs.70,000/- under the conventional heads i.e. Rs.40,000/- towards loss of love and affection; Rs.15,000/- towards loss of estate; and Rs.15,000/- towards funeral expenses.

I find no error, whatsoever, in the compensation as granted by the ld. Tribunal. Argument of the ld. counsel for the appellants that the claimants are entitled to Rs.40,000/- each by way of consortium is liable to be rejected in view of latest judgment of Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & anr; others,C.A.No.2410-2412/2023,** and reiterated **in Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022** and **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018,** wherein it has been held that a total amount of Rs.70,000/- has to be awarded under the conventional heads, including Rs.40,000/- '*in toto*' as consortium. Accordingly, there is no merit in the argument on behalf of the appellants that a sum of Rs.40,000/- each has to be awarded to each of the claimants as consortium. Even otherwise, two of the claimants are the elder brothers of the deceased and are not entitled to compensation. No judgment to the contrary has been cited by the ld. counsel for the appellants at the time of hearing.

I find no error whatsoever in the above compensation as granted by the ld. 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. **(Nidhi Gupta)**
Joshi **Judge**

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