IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

253 **FAO-1806-2021**
Date of decision: 12.04.2023

Prem Lata and others **...Appellant(s)**

Vs.

Raj Kumar & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ram Kumar Saini, Advocate
for the appellants.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.18,43,095/- granted by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as "the learned Tribunal") vide Award dated 05.03.2020 passed in MVA Petition No.109 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants/ Appellants before this Court are the widow, and two major sons aged 37 and 39 years of age, of the deceased Ved Parkash.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Ved Parkash had died due to injuries suffered by him in a motor vehicular accident that took place on 14.07.20178 due to rash and negligent driving of Truck bearing registration No.HR-46B/8145 hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2 and insured by the respondent No.3 herein. Leaned Tribunal awarded compensation as above along

with interest @ 7.5% per annum. Respondents were held jointly and severally liable to pay the above compensation of compensation.

3. Ld. counsel for the appellants/claimants seeks enhancement of compensation on the sole ground that nothing has been granted by way of consortium to the appellants No.2 & 3, who are major sons of the deceased.

4. No other argument is raised on part of the appellants.

5. I have heard ld. Counsel for the appellants.

6. The ld. Tribunal has computed the compensation payable to the appellants in the following manner. On the basis of the evidence led by the claimants gross income of the deceased was assessed to be Rs.36026/- per month. It was the appellants' case before the Tribunal that the deceased was employed as Peon in Government High School, Bhagana, District Hisar thereby getting a sum of Rs.36000/- per month as salary. To prove the income of the deceased the appellants examined Sandeep, Lab Assistant, Government High School Bhagana, District Hisar as PW8, who brought the service record of the deceased. PW8 Sandeep, testified on oath that last pay of deceased Ved Parkash mentioned in the service book Ex.P25 is Rs.34,100/- as basic pay, and after adding D.A. @ 4% i.e. Rs.1364/- his gross income comes to Rs.35,464/-. He has also proved salary slips Ex.P119 to Ex.P121. In his cross examination, he has stated that as reflected in the salary slip for the month of June, 2017-18 Ex.P119, the gross income of deceased was Rs.36,026/-. He has further stated that sanction order under the provisions of Haryana Compassionate Employees Rules, 2006 dated 14.10.2017 in favour of Prem Lata is Ex.P122. No evidence to the contrary was produced by the respondents.

7. Ld. Tribunal had rejected the argument of the claimants that the deceased was earning Rs.20,000/- per month from agriculture, as no evidence in

support thereof was led by the appellants. Moreover, it is established position in law that income from agriculture is not included while assessing income for purposes of computing compensation payable to claimants as, claimants are not deprived of the agricultural land and therefore, said income from land continues even after death of the deceased. Thus, there is no loss of agricultural or dairy farming income as said income is still available with the appellants. As such, there is no merit in this plea raised by the appellants. Accordingly, I find no error in the income as assessed by the learned Tribunal.

8. Further, as age of the deceased was determined to be 59 years, learned Tribunal has correctly made an addition of 15% towards future prospects, thus, calculating total income of the deceased to be Rs.4,97,159/- per annum. As claimants No.2 and 3 were major sons of the deceased, learned Tribunal correctly held claimant/appellant No.1 widow of the deceased to be the sole dependent on the deceased, and therefore, correctly made a deduction of 50% towards personal expenses. Even now, appellants No.2 and 3 have led no evidence whatsoever to show their pecuniary dependency on the deceased. As such, I find that learned Tribunal has correctly assessed annual income of the deceased a Rs.2,48,579.50 (Rounded of Rs.2,48,580/-). Multiplier of 9 has also been correctly applied. Thus, total loss of dependency works out to be Rs.2,48,580x9=Rs.22,37,220/-. The learned Tribunal further found that the appellant No.1/widow of the deceased was getting a sum of Rs.36987/- as ex gratia payment for a period of 12 months and 17 days totalling to an amount of Rs.4,64,125/-. This amount was deducted making loss of dependency of Rs.17,73,0395/-. Learned Tribunal further granted Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate; and Rs.40,000/- on account of spousal consortium, totalling to Rs.18,43,095/-.

9. As regards sole argument on part of the appellants that nothing has been granted by way of parental consortium to the claimants/appellants no. 2 and

3 who are major sons of the deceased aged 37 and 39 years respectively, I find no merit in this sole submission. In holding thus, I draw support from judgment of the Hon'ble Supreme Court in ***'New India Assurance Company Ltd. Vs. Vinish Jain and others, Law Finder Doc ID#977386'*** as also this Court in ***(P&H) 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*** wherein it has been held that major sons being not dependent on deceased are not entitled to compensation. Even nothing has been stated or placed on record to show that appellants no. 2 and 3 were dependent on the earnings of the deceased. It is accordingly, held that appellants No.2 and 3 are not entitled to any compensation.

10. Even otherwise, even if plea of the appellants were to be accepted, at best Rs.40,000/- each would have been awarded towards parental consortium to claimants No.2 and 3. The difference in compensation comes to only Rs.80,000/-. The Hon'ble Supreme Court in case of ***Vinish Jain (supra)*** as also in case of ***'National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680',*** has held that where the difference in compensation is about 4% to 5% only, it does not warrant the interference by this Court as, such variation in compensation is within permissible limits.

11. Accordingly, in view of the discussion above, I find no case is made out that merits interference with the impugned Award. I find the compensation awarded to the appellants to be just and fair in the facts and circumstances of the case. 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. Hon'ble Supreme Court in ***State of Haryana v. Jasbir Kaur, (1999)1 SCC 90*** and ***Divisional Controller K.S.R.T.C. v. 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 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.

12. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly, stands **dismissed.**

13. Pending application(s) if any also stand(s) disposed of.

12.04.2023 **(Nidhi Gupta)**
Ps-I **Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No