IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2816/2022(O&M)

Date of decision: 03.05.2023.

Shakuntala and another

………………Appellants

Vs.

Ashok Kumar and another

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Virender Kumar, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of Rs.8.66 lacs awarded by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') vide Award dated 16.8.2021 passed in MACP 164/2018 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are parents of deceased Harjeet Singh.

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 8.10.2018 due to rash and negligent driving of Tractor bearing registration No. PB-12-AE-6928 (hereinafter referred to as 'the offending vehicle') owned and driven by respondent no.1, and insured by respondent no.2. The Tribunal awarded compensation as above along with interest @ 6% per annum from the date of filing of the claim petition till realization. Ld. Tribunal held that primary responsibility to pay the compensation was that of Insurance Company. Ld. Tribunal on the basis of material placed before it held that as there had been breach of terms and conditions of the insurance policy, respondent no.2 is granted recovery rights against respondent no.1.

Ld. counsel for the appellants seeks enhancement of compensation on the ground that ld. Tribunal has applied multiplier of 15 whereas multiplier of 18 should have been applied. It is submitted that the deceased was less than 15 years of age and therefore, multiplier of 18 should have been applied. It is further submitted that the ld. Tribunal has granted nothing by way of loss of love and affection.

No other argument has been raised.

Heard ld. counsel.

Perusal of the impugned Award shows that though it was pleaded case of the appellants that deceased was 17 years of age. However, as per Ex.P9 School Leaving Certificate of the deceased, his date of birth is shown therein to be 10.10.2003. Even in Ex.R1, copy of birth certificate of deceased, his date of birth is mentioned as 10.10.2003. Even appellant no.1, mother of the deceased while appearing as PW2 has admitted in her cross examination that birth certificate Ex.R1 was correct. As the accident had taken place on 8.10.2018, therefore, ld. Tribunal correctly concluded that the deceased was less than 15 years of age at the time of death.

As the deceased was admittedly, a student of Class IX at time of death, and was not earning, ld. Tribunal took his notional income as Rs.6000/-

per month. Thereafter in compliance of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, ld. Tribunal correctly made addition of 40% towards future prospects thus, taking the monthly income to be Rs.8400/- and annual income to be 1,00,800/- (8400x12). As the deceased was a bachelor, a deduction of 50% was correctly made towards personal expenses.

Thereafter, ld. Tribunal correctly applied multiplier of 15 which is now also in conformity with the judgment of the Hon'ble Supreme Court in **Divya v National Insurance Co. Ltd., 2022 Live Law (SC) 892** wherein it has been held that if the deceased is between 0 to 15 years of age, multiplier of 15 has to be applied. Thus, the total dependency came to be 7,56,000/- (1,00,800/2x15). Ld. Tribunal further awarded Rs.40,000/- each to both claimants as consortium, and Rs.15,000/- towards funeral expenses, and Rs.15,000/- towards loss of estate.

As regards argument on behalf of the ld. counsel for the appellants that 10% increase ought to have been applied in this case in granting compensation under the conventional heads, I find no merit in the same. Even if said argument were to be accepted, the difference in compensation would be only Rs.7000. Hon'ble Supreme Court in the case of **New India Assurance Company Limitted v Vinish Jain and others, Law Finder Doc Id # 977386** has held that where the difference in compensation is about 4-5%, it does not warrant interference by this Court.

This judgment of the Hon'ble Supreme Court has been reiterated by the Kerala High Court in **The Managing Director, Divisional Controller**

Versus Alikutty and ors., Law Finder Doc Id # 1885188. Relevant para 18 of the said judgment is reproduced below:-

> "18. It is to be borne in mind, the accident occurred on 23,2,2019. It is more than 2 ½ years since the respondents 1 to 4 have been knocking at the doors of the Courts seeking compensation on account of the death of the bread winner. It is trite law that the Tribunal is permitted to do some guess work and also exercise its discretion to fix the reasonable and just compensation, for which there cannot be any straight jacket formula based on mathematical precision. In ***New India Assurance Company v. Vinish Jain and others [(2018) 3 SCC 619]***, the Hon'ble Supreme Court has held that if the fixation of compensation is within permissible limits, the courts should normally not interfere with such awards".

Above said view has been reiterated by the Kerala High Court in **Reliance General Insurance Company Limited vs. Adila and others, Law Finder Doc ID # 1921609**, paras 16 and 17 of which read as under:-

> "16. The other area of dispute is that the Tribunal after awarding compensation under the conventional heads has awarded Rs.75,000/- towards loss of love and affection and Rs.10,000/- awarded towards pain and sufferings.
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> 17. In ***New India Assurance Co., Ltd v. Vineesh.J [2018 (3) SCC 619]***, the Hon'ble Supreme Court has held that the Appellate Court can permit variation of plus or minus 4 to 5 percent".

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. 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 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.

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

03.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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