

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-5720-2019 (O&M)

Date of decision: 20.02.2023

Sunita & Others

...Appellant(s)

Vs.

Gaurav & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kartik, Advocate for
Mr. Baljeet Beniwal, Advocate for the appellants.

NIDHI GUPTA, J.

CM-19076-CII-2019

This is an application under Section 5 of Limitation Act for condonation of delay of 75 days in filing the appeal. After going through the contents of application, the same is allowed subject to all just exceptions.

CM-19079-CII-2019

This is an application under Section 151 of CPC for condonation of delay of 45 days in re-filing the appeal. After going through the contents of application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.8,48,800/- awarded by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as "the learned

Tribunal”) vide Award dated 29.10.2018 passed in MACT Case No.345 of 2017 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as “the Act”). Claimants are the widow and two major sons of deceased-Mitter Singh.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Mitter Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 02.05.2017 due to the rash and negligent driving of car bearing registration No.DL-9C-AA-6790 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as noted above along with interest @ 7% per annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the compensation.

3. Learned counsel for the appellants seeks enhancement of compensation on the ground that income of the deceased has been taken as Rs.8,000/- per month which is on lower side as deceased was also an agriculturist. However, his income from agriculture has not been taken into account.

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

5. I have heard learned counsel for the appellants.

6. Perusal of record shows that deceased had retired from Army and was receiving pension at the time of death. Admittedly appellant No.1 being widow of deceased continues to receive pension. Accordingly,

there can be no loss of income accrued in that respect. As regards income of the deceased from agriculture, the same was not proven on record. No evidence whatsoever was led by the appellants in the form of Income Tax Returns or any such proof to prove that the deceased had any income from agriculture.

7. 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 the sole argument raised by the learned counsel for the appellants. In view of the above facts, there is no error in the assessment made by learned Tribunal in taking notional income of the deceased as Rs.8,000/- per month as per notification for Minimum Wages issued by State of Haryana admissible to an unskilled person.

8. Further, claimants being three in number, learned Tribunal has correctly made deduction of $\frac{1}{3}^{\text{rd}}$ income under head of personal expenses. As deceased was 53 years of age at the time of death (as determined from Exhibit P5/PAN card of the deceased), 10% was correctly added towards future prospects, and multiplier of 11 was also correctly applied. Resultantly, total loss of dependency was calculated to Rs.7,78,800/-. Rs.15,000/- was granted towards loss of estate; Rs.15,000/- towards funeral expenses; and appellant No.1 being widow of deceased was granted Rs.40,000/- towards loss of consortium. Accordingly, total

compensation of Rs.8,48,800/- was awarded by learned Tribunal. Appellant No.1 was granted 60% of the compensation amount whereas appellants No.2 and 3 being major sons of deceased were given 20% each.

9. In view of the above, I find the compensation awarded to be just and fair in the facts and circumstances of the case.

10. 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.

11. Present appeal accordingly stands dismissed.

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

20.02.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No