

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO 4779/2019 (O&M)
Date of decision: 20.04.2023****Manjeet and others****.....Appellants****Vs.****Abhishek and others****.....Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Vikas Chaudhary, Advocate for the appellants.****Nidhi Gupta, J.**

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs. 19,78,900/- granted by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') vide Award dated 25.10.2018 passed in MACP No.62/2017 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). The five Claimants/ appellants herein, are the widow, two minor children, and parents of deceased Subhash Chand.

Ld. Tribunal on the basis of pleadings and evidence on record held that the deceased died due to injuries suffered by him in motor vehicular accident that took place on 11.3.2017 due to rash and negligent driving of Car bearing registration No. HR-08-J-5505 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. 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.

It is submitted by the ld. Counsel for the appellants that they are entitled for enhancement of compensation on the ground that the ld. Tribunal has taken notional income of the deceased as Rs.10,100/- per month. It is submitted that deceased was Diploma holder and his income ought to have been taken as Rs.20,878/-. It is further submitted that nothing has been granted by way of consortium. It is further stated that as per judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130;** claimants are also entitled to compensation for loss of love and affection.

No other argument has been raised.

Heard ld. Counsel.

Perusal of the impugned Award shows that ld. Tribunal has taken the age of the deceased as 38 years as per Ex.P1 copy of the driving licence of the deceased, as well as per Ex.P-15 which is copy of the post mortem report of the deceased. As per Ex. P-5, as the deceased was admittedly, a Diploma holder in Elementary Teacher Training Course, ld. Tribunal took the notional income of the deceased as that admissible to a skilled person, as Rs.10064.64/- (rounded off to Rs. 10,100/-) per month on the basis of relevant Minimum Wage Notification dated 15.5.2018. Ld. Counsel for the appellants has handed over a Haryana Govt. Notification dated 25.6.2018, to submit that income of the deceased ought to have been taken in conformity with said notification, as Rs. 20,878/- as admissible to a MPHWS. I do not find myself in agreement with the said contention as a) there is nothing on record to suggest that the deceased was a MPHWS i.e. Multi-Purpose Health Worker; b) said Notification is applicable for the year 2019-19 i.e. from 1.3.2018 to 28.2.2019, whereas in the present case date of

accident is 11.3.2017. Therefore, the said notification relied upon by counsel for the appellants will not be applicable to present case. Accordingly, I find no error in the notional income as assessed by Id. Tribunal.

Further, Id. Tribunal has made an addition of 40% by way of future prospects, which is correct and in conformity with judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. The monthly income of the deceased was calculated as Rs.10,100/-, and annual income as Rs.1,69,680/-. As claimants are 5 in number Id. Tribunal correctly made deduction of 1/4th towards personal expenses, taking annual dependency to be Rs.1,27,260/-. Multiplier of 15 was correctly applied. Thus, the total dependency came to be Rs.19,08,900/-. Id. Tribunal further granted Rs. 70,000/- under conventional heads.

Contention of Id. Counsel for the appellants that nothing has been granted by way of consortium is incorrect as, an amount of Rs.70,000/- has been granted by the Id. Tribunal under the conventional heads, i.e. Rs.15,000/- towards funeral expenses, Rs.15,000/- on account of loss of estate and Rs.40,000/- towards loss of consortium, totalling Rs.70,000/-. As per latest judgment of the Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023**, it has been held therein that in terms of judgment of Hon'ble Supreme Court in **Pranay Sethi (supra)**, total amount of Rs.40,000/- has to be granted towards consortium i.e. Rs.40,000/- should be the total amount payable as consortium in toto, and not Rs.40,000/- each per

legal heir. Accordingly, there is no error in grant of consortium either. No case law to the contrary has been cited by Id. Counsel for the appellants.

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. 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.

For the reasons stated above, finding no merit in this appeal the same is hereby dismissed.

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

20.04.2023
joshi

(Nidhi Gupta)
Judge