IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247 **FAO-3169-2021 (O&M)**

Date of decision: 30.05.2023

Sukhi Devi

...Appellant(s)

Vs.

Dalip Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Dheeraj Narula, Advocate
for the appellants.

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NIDHI GUPTA, J.

Present appeal has been filed by the sole claimant seeking enhancement of compensation of Rs.12,70,000/- granted by Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as "the learned Tribunal") vide Award dated 03.03.2020 passed in MACP Petition No.213 of 2018 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Sole claimant/appellant herein is the mother of deceased-Ravish who was 30-year-old at the time of death. Pro-forma respondents No.4 and 5 herein are major married sisters of the deceased.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Ravish had died in a motor vehicular accident that took place on 05.09.2018 due to rash and negligent driving of truck bearing registration No.RJ-07-GD-2949 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2

and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia on the grounds:

a) that income of the deceased has been taken on lower side as only Rs.8,540/- per month whereas it has been proven on record that the deceased was running a diary farm and was owning 9-10 acres of land;

b) that learned Tribunal has incorrectly made a deduction of 50% towards personal expenses whereas keeping in mind the pro-forma respondents being sisters of the deceased, learned Tribunal ought to have made a deduction of 1/4th towards personal expenses. It is submitted that father of the deceased had pre-deceased the claimant and therefore, pro-forma respondents No.4 and 5 were entirely dependent upon the deceased. It has been averred in the appeal that "..*After his death, entire family is at the verge of starvation*". Therefore, learned Tribunal ought to have awarded Rs.30,00,00/- on account of accidental death of the deceased/son of the appellant.

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

5. I have heard learned counsel for the appellant.

6. Perusal of impugned Award reveals that age of the deceased was taken to be 30 years on the basis of his post-mortem

report (Exhibit P9). Though, it was the pleaded case of the appellant before the learned Tribunal that the deceased was earning Rs.15,000/- per month, but except for the bald statement of PW1/appellant, no documentary proof was placed on record by the appellant to show income of the deceased. As such, learned Tribunal correctly took notional income of the deceased as Rs.8,540/- per month on the basis of relevant Minimum Wage Notification issued by the State Government.

7. As deceased was admittedly a bachelor at the time of death, learned Tribunal made a deduction of 50% towards personal expenses. Though, it has been argued on behalf of the appellant that the pro-forma respondents No.4 and 5 were dependent on the deceased being his sisters, yet perusal of Memo of Parties shows that they are married and settled in their matrimonial homes. As such, they cannot be taken to be dependents of the deceased. As such, I find no error in deduction of 50% made towards personal expenses. Thus, taking monthly dependency to be Rs.4,270/-.

8. As deceased was 30 years of age at the time of death, learned Tribunal correctly made an addition of 40% towards future prospectsin accordance with law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680.** Therefore, Rs.4,270/- + Rs.1,708/- = Rs.5,978/-; and annual income comes to Rs.5,978/- x 12 = Rs.71,736/-. Thereafter, learned Tribunal applied multiplier of 17 in accordance with law laid down by Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation**

(2009) AIR (SC) 3104. Thus, taking annual dependency to be Rs.71,736/- x 17 = Rs.12,19,512/-.

9. Learned Tribunal further awarded a sum of Rs.25,000/- towards loss of love & affection, and Rs.25,000/- towards funeral expenses. Thus, granting a total compensation of Rs.12,69,512/- rounded off to Rs.12,70,000/-.

10. It has been vehemently argued on part of the appellant that sum of Rs.70,000/- ought to have been granted under the conventional heads. However, Hon'ble Supreme Court in **"New India Assurance Co. Ltd. Vs. Vinish Jain & Others" Law Finder Doc ID # 977386** has held that where the difference in compensation is about 4% to 5%, it does not warrant interference by this Court.

11. This judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in **The Managing Director, Divisional Controller Versus Alikutty and Others, 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".

12. 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".

13. In my view, the above facts amply demonstrate that no case is made out that merits interference with the impugned Award. 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 opinion, in the present case, the learned Tribunal has taken a very fair, just and rational view, 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.

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

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

30.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No