IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

234 **FAO-479-2020 (O&M)**
Date of decision: 30.05.2023

Sh. Savitri & Others
...Appellant(s)
Vs.
Manish & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. H.S Gharoo, Advocate for
Mr. Amit Kumar Goyal, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-471-CII-2020

This is an application under Section 151 of Code of Civil Procedure, 1908 seeking condonation of delay of 116 days in re-filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-476-CII-2020

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 292 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,60,000/- granted by Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as "the learned Tribunal") vide Award dated 23.04.2018 passed in MACP-715 of 2018 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants are the widow, 32-year-old son, 26-year-old son, and 24-year-old son of deceased-Prem Singh who was 62 years of age at the time of death.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Prem Singh had died in a motor vehicular accident that took place on 08.06.2018 due to rash and negligent driving of ECCO car bearing registration No.DL-06CN-4087 (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 @ 8% 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 appellants seeks enhancement of compensation on the grounds:

a) that learned Tribunal has applied multiplier on lower side. It is submitted that the learned Tribunal has lost sight of the fact that there were four dependents in the family and proper compensation has not been awarded. It has been mentioned in para 3 of Grounds of Appeal that "*the learned MACT has not considered the fact that the deceased remain hospitalised for a very long time before the death. Accident took* *place on 08.06.2018 and deceased died on 09.06.2018. The death was not on the spot. The claimants have spent Rs.5 lacs on treatment, medicines, special diet, attendant etc. in the present case*.";

b) that income of the deceased has been taken on lower side. It is submitted that the deceased was doing agricultural work and he was running one guest house under the name and style of Mannat Residency. Monthly income of the deceased was Rs.1,40,000/-. However, these facts have not been considered by the learned Tribunal;

c) that rate of interest is also on lower side and learned Tribunal ought to have granted interest @ 12% per annum. It is therefore prayed that compensation granted to the appellants be enhanced to Rs.2 crore.

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

5. I have heard learned counsel for the appellants.

6. Perusal of record of the case shows that it was the pleaded case of the appellants before the learned Tribunal that the deceased was earning Rs.1,40,000/- per month as follows:-

a) the deceased was retired as Sub-Inspector from Haryana Police and getting a pension of Rs.19,475/- per month;

b) he also used to do agricultural work from which he used to earn Rs.50,000/- per month;

c) besides this, the deceased was running a guest house under the name and style of Mannat Residency from which he was earning Rs.70,000/- per month. In support, the appellants had placed on record Income Tax Return of the deceased Exhibit P56 for the assessment year 2016-17.

7. Findings of the learned Tribunal in respect of the income of the deceased are relevant and are contained in Paras 12 and 13 of the Award, which are reproduced hereinbelow:-

> "12. So far as income from the agricultural source is concerned, it cannot be counted as loss of income as it is an immovable asset and there is nothing on record that deceased Prem Singh himself was doing any cultivation. A perusal of the revenue record placed on record shows that he was owner of some agricultural land which after his death would have been transferred in the name of his legal heirs and income from that land would be received by them as per their respective shares. Petitioners have stated that the deceased used to take 7/8 acres land on lease, but no documentary proof in this regard has been placed on file by the petitioners.
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> 13. So far as the income of the deceased from business of residency is concerned, the petitioners have placed on record the copy of income and expenditure account of Mannat residency Ex.P54 which shows the direct income from that residency was ₹5,77,282 for the year ending on 31st March, 2017, but there is no income tax return reflecting income of ₹5,77,282/- with respect of Mannat residency. However, in the income tax return of Prem Singh for the assessment year 2016-17 Ex.P56 total gross income has been shown to be ₹ 2,98,500/- and

additional income of ₹8,00,000/- from agricultural source which was exempted from the income tax. The income of ₹2,98,500/- includes income from house property as 1,08,500/- and from pension ₹1,90,000/-. The income of ₹ 1,08,500/- from house property and income of ₹ 8,00,000/- cannot be taken into account forthe purpose of computation of loss of income as said income from the two sources will remain stable even after death of Prem Singh since deceased. In the income tax return for the year 2017-18 Ex.P62 total gross income has been shown to be ₹ 4,29,190/- and from agricultural source the total income has been shown to be ₹8,50,000/- which was exempted from the income tax and in the income tax return for the year 2018-19 Ex.P71 total gross income has been shown to be ₹11,02,246/- and from agricultural source the total income has been shown to be ₹6,00,000/- which was exempted from the income tax. In the year 2017-18 the deceased paid ₹34,782/- as tax and in the year 2018-2019 he paid ₹2,39,085/-. Learned counsel for the respondent No. 3 submitted that the above returns were filed by the petitioner after the death of Prem Singh and hence, same needs to be discarded, as manipulation of the income on the higher side cannot be ruled out. I agree with the contention of learned counsel for the respondent No. 3 in this regard."

8. Perusal of above facts shows that as far as pension of the deceased amounting to Rs.1,90,000/- per annum is concerned, no loss therefrom has occurred as admittedly, widow of the deceased continues to receive the said amount.

9. As far as income from agricultural land is concerned, it is established position in law that income from agriculture is not included, while computing compensation payable under the Act as, the said income continues to be available to the claimants even after the death of the deceased. As such, there is no 'loss of income' from the said source. Furthermore, it has been admitted by learned counsel for the appellants before this Court that after the death of the deceased, the claimants are taking care of the guest house. Clearly, therefore, there is no loss of income to the appellants, even from the Guest House. Accordingly, I find no ground is made out to enhance Rs.15,000/- per month granted by learned Tribunal towards managerial loss for managing the guest house as well as agricultural land.

10. As regards purported expenditure by the appellants on the treatment of the deceased, no medical bills in this regard have been produced or proved on record in accordance with law. Accordingly, appellants are not entitled to any reimbursement in this respect.

11. As regards prayer of the appellants that rate of interest be enhanced from 8% to 12%, I find no merit in the same. It has been held by the Hon'ble Supreme Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India, SC Law Finder Doc ID # 117404,** that award of interest is only on the discretion of the Tribunal or the High Court. I find the rate of interest as awarded by the learned Tribunal to be just and fair. Interest cannot be claimed as a matter of right by the appellants/claimants.

12. Perusal of the record further reveals that the deceased was found to be 62 years of age as per post-mortem report (Exhibit P11). As such, learned Tribunal correctly applied multiplier of 7 and calculated total dependency to be Rs.15,000/- x 12 x 7 = Rs.12,60,000/-. Learned Tribunal further granted Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium. Thus, totalling to compensation of Rs.13,60,000/-.

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