IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4635/2019(O&M)

Date of decision: 03.05.2023.

Suman Deep Kaur and another

………………Appellants

Vs.

Deepender @ Iqbal Khan and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Siwach, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.11,90,056/- granted by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') vide Award dated 9.4.2019 passed in Claim Petition No.2/2018 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are widow and minor son of deceased Rajbir, aged about 44 years 10 months at time of death.

Ld. Tribunal on 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 4.12.2017 due to rash and negligent driving of car bearing registration No. HR-05-AN-7016 (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.

Ld. Counsel for the appellants seeks enhancement of compensation on the ground that the ld. Tribunal has taken the income of the deceased as only Rs.8000/- per month. It is submitted that it has however, been proven on record that the deceased was employed as Manager with Sun Rise International Group at Hisar, and was also an agriculturist, and was earning Rs.40,000/- per month from both the above sources.

No other argument has been raised.

Heard ld. Counsel.

Perusal of the impugned Award shows that in this respect the ld. Tribunal has recorded the following findings in paras 18 and 19 of the impugned Award:-

> "18. PW3 Satbir Singh, Manager Sun Rise International Group, 147, First Floor, Professor Colony, Hisar has tendered his duly sworn affidavit Ex. PW3/A stating therein that Rajbir (now deceased) was serving as Manager with Sun Rise International Group, Hisar and was getting salary of Rs. 20,000/- per month for the last two years.
>
> 19. The petitioners have led oral evidence that the deceased Rajbir was serving as Manager with Sun Rise International Group, Hisar and was an agriculturist and was earning Rs. 40,000/- per month from the above sources. <u>However, witness Suman Deep Kaur (claimant) clearly admitted in her cross-examination that her husband was not owning any land in his name. She does not know about the time of joining of service by her husband with Sun Rise Company.</u> She has no appointment letter of her husband. Witness

Satbir Singh (PW3) during cross-examination has stated that he has not brought the record regarding joining of services by Rajbir Singh in his company. The abovesaid witness also admitted that his firm is a private firm and he cannot tell the date of birth of deceased. According to him, three-four employees were working in his said firm at that time and he does not maintain the attendance of employees in his office. No letter of appointment has been placed on record regarding the appointment of the deceased Rajbir as Manager with the alleged Sun Rise company. No record of Sun Rise Company has been produced before the Tribunal to prove that in fact this company actually exists. No tax-returns of the company have been produced on the record. No explanation has been furnished by the petitioners to withhold this cogent evidence from the court. In the absence of any cogent documentary evidence, it cannot be said that the deceased Rajbir was working as Manager with the abovesaid alleged Sun Rise Company. Similarly, the deceased is also not proved to be an agriculturist as his wife while appearing as a witness has admitted that she has no record regarding ownership of the deceased Rajbir in respect of any agricultural land. Accordingly, in the absence of any documentary proof of the income and avocation of the deceased Rajbir, the depositions of the aforesaid witnesses Suman Deep Kaur and Satbir Singh cannot be relied upon by the Tribunal. However, the fact remains that the deceased Rajbir was an able-bodied and healthy male. In the given facts and circumstances, I assess the income of the deceased Rajbir at Rs. 8000/- per month. In the copy of post mortem report Ex. P8, the age of the deceased Rajbir has been mentioned as forty-two years. However, in the copy of Matriculation Examination Certificate Ex. P10, the date of birth of Rajbir Singh son of Dalip Singh was mentioned as 25.01.1973, meaning thereby the deceased Rajbir was about forty-four years ten months old. In accordance with the law laid down by the Hon'ble Supreme Court in the ruling cited as **National Insurance Company Limited Versus Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017,** an addition of 25% of the income has to be made towards future prospects of the deceased. Consequently, the income of the deceased Rajbir Singh is to be assessed at Rs. 10,000/- (Rs. 8000+ 25% of Rs. 8000) per month". (emphasis supplied)

Accordingly, in view of the above findings which have remained uncontroverted by the ld. Counsel for the appellants, I find no error in the notional income as assessed by the ld. Tribunal. As the deceased was aged about 44 years at the time of his death, addition of 25% made towards future prospects is correct. As the claimants are two in number, a deduction of 1/3rd was correctly made towards personal expenses. Ld. Tribunal has further correctly applied the multiplier of 14 in accordance with the law laid down by the Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104.** Ld. Tribunal has further granted a sum of Rs.70,000/- under conventional heads, thus, granting total compensation of Rs.11,90,056/-.

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**