IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3643/2022(O&M)

Date of decision: 02.06.2023.

Radha Devi and others

………………Appellants

Vs.

Satish Mishra and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Wazir Singh, Advocate for the appellants.

Nidhi Gupta, J.

CM 10875-CII/2022

Since there is delay of 60 days in filing the appeal, aforesaid application has been filed seeking condonation of said delay.

2. For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal.

3. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.27,91,600/- granted by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') vide Award dated 28.2.2022 passed in MACP-280 of 2017 filed u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). The five Claimants are the widow, parents, and two minor children of deceased Arun Singh who was 24 years old at the time of his death.

4. Ld. Tribunal on the 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 23.2.2017 due to rash and negligent driving of Car bearing registration No. UP-16-BT-1544 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1 and owned by respondent no.2. As the offending vehicle was not insured at the time of accident, accordingly the ld. Tribunal held the respondents jointly and severally liable to pay the compensation. The Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim petition till realization.

5. Ld. counsel for the appellants seeks enhancement of compensation inter alia, on the ground that it has been proven on record that the deceased was a salaried person, drawing a salary of Rs.12,000/- per month. It is submitted that accordingly future prospects ought to have been added @ 50% and not 40% as done by the ld. Tribunal. It is further submitted that only Rs.40,000/- has been granted by way of consortium and a total sum of Rs.70,000/- has been granted under the conventional heads whereas, as per judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, 10% increase has to be made every three years and therefore, Rs.77,000/- ought to have been granted under the conventional heads.

6. No other argument has been advanced.

7. Heard ld. counsel for the appellants.

8. Perusal of the record of the case shows that age of the deceased was determined to be 24 years at the time of death on basis of his Postmortem Report Ex.P-11.

9. On the basis of testimony of PW3 Mahender Singh it was proven on record that the deceased was working as Nursing Staff in M/s Sharma Medicare Pvt. Ltd. and drawing salary of Rs.12,000/- per month i.e. Rs.1.44 lacs per annum. Accordingly, ld. Tribunal in accordance with **Pranay Sethi** (supra) made an addition of 40% towards future prospects. Though it has been argued on behalf of the appellants that future prospects ought to have been added at the rate of 50%, however, I find no merit in the said argument. Perusal of judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra) shows that Hon'ble Supreme Court has held that future prospects of 50% have to be granted where the deceased was in a 'permanent job'. In the present case, there is nothing on record to show as to how long the deceased had been in the employment of M/s Sharma Medicare Private Limited. There is nothing to indicate that the job of the deceased was permanent in nature. Moreover, in my view, 'permanent job' necessarily implies government employment which is not on contract basis, and where a fixed salary is being paid. In the private sector, it cannot be said that the job held by the incumbent is 'permanent' in nature. Accordingly, I find no error in the addition of future prospects of 40% as made by the learned Tribunal.

10. Furthermore, ld. Tribunal, in accordance with the law laid down by Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** has correctly applied multiplier of 18. As claimants were five in number, ld. Tribunal correctly made a deduction of 1/4th towards personal expenses, calculating compensation to Rs.27,21,600/-.

11. Ld. Tribunal has further granted Rs.70,000/- under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- on account of loss of love and affection, and Rs.15,000/- on account of funeral expenses. As per latest judgment of Hon'ble Supreme Court **Civil Appeal Nos. 2410-2412 of 2023 Shri Ram General Insurance Com. Ltd. vs. Bhagat Singh Rawat & ors.** it has been held that *total* amount payable under head of consortium is Rs.40,000/-; meaning thereby that consortium 'in toto' of Rs. 40,000/- has to be granted. Hon'ble Supreme Court in the above said judgment has also held that Rs.15,000/- each has to be granted by way of funeral expenses and loss of estate.

12. It has been argued by the ld. counsel for the appellants that amount under the conventional heads ought to have been Rs.77,000/- i.e. 10% increase allowed every three years in the above said amounts ought to have been included. No doubt, an increase of 10% every 3 years has been permitted however, Hon'ble Supreme Court in **'New India Assurance Company Ltd. Vs. Vinish Jain and others, Law Finder Doc ID#977386'**, has held that where there is difference 4% to 5% only in compensation, it does not warrant interference by this Court.

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

14. 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."

15. 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.

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

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

02.06.2023. **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**