IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4124/2022(O&M)

Date of decision: 11.05.2023.

Suman and others

………………Appellants

Vs.

Bajrang and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Amit Khatkar, Advocate for the appellants.

Nidhi Gupta, J.

CM 12611-CII/2022

1. Since there is delay of 24 days in filing the appeal, aforesaid application has been filed u/s 5 of the Limitation Act,1963 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 CASE

3. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.21,43,672/- granted by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 21.4.2022 passed in MACP/122/2019 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') filed under Section

166 of the Act. Claimants are widow, two minor children and parents of the deceased Krishan Kumar who was aged 30 years at the time of his death.

4. 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 1.1.2019 due to rash and negligent driving of Cruiser bearing registration No. HR-39C-6630 (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 @ 6% per annum from the date of filing of the claim petition till realization. Pursuant to the accident case bearing FIR No.1 dated 1.1.2019 was also registered. Respondents were held jointly and severally liable to pay the compensation.

5. Ld. Counsel for the appellants seeks enhancement of compensation solely on the ground that income of the deceased has been taken on lower side as only Rs.8,827/- per month on the basis of Minimum Wage Notification at the relevant time. It is submitted that there is unrebutted evidence on record that the deceased was working with Narang Trading Company and Narang Syndicate, Hisar for the last 12 years and earning a salary of Rs.20,000/- per month. It is submitted that claimants had also produced PW1 Parmod Narang who proved income of the deceased. However, Ld. Tribunal has ignored the cogent evidence led by the claimants and wrongly assessed notional income of the deceased as Rs.8,827/- per month. It is further submitted that even the amount of Rs.77,000/- granted under the conventional heads is on lower side and needs to be enhanced. It is further submitted that even deduction of 1/4th made towards personal

expenses too is on higher side; and that rate of interest deserves to be enhanced from 6% per annum to 12% per annum.

6. No other arguments has been raised.

7. Heard ld. Counsel.

8. Perusal of the record of the case shows that age of the deceased was determined to be 30 years at the time of accident on the basis of his Aadhar Card Ex. R1. Though it was the pleaded case of the claimants that the deceased was working as a Supervisor with Narang Trading Company and Narang Syndicate, Hisar since 12 years prior to his death and was getting Rs.20,000/- per month as salary, however, Ld. Tribunal held that income of the deceased was not proven on record. No doubt the claimants had examined PW1 Parmod Narang, Proprietor of Narang Trading Company and Narang Syndicate who had deposed as above in support of the claimants, however, admittedly in his cross-examination PW1 has admitted that he was not maintaining any Attendance Register of his employees. He has further admitted that though he files ITRs, he has not depicted the salary being paid to his employees in the ITRs. He has further candidly admitted that he cannot produce any document regarding employment of employees with him. In this view of the matter, I am in agreement that the conclusion of the ld. Tribunal that income of the deceased was not proved on record. Thus, there is no error in notional income of the deceased as assessed by the ld. Tribunal as Rs.8827/- per month.

9. In view of the fact that the deceased was 30 years at the time of his death, Ld. Tribunal has correctly made addition of 40% towards future prospects. As claimants are five in number, Ld. Tribunal has correctly made

deduction of 1/4th towards personal expenses and correctly applied multiplier of 17. Ld. Tribunal has further granted Rs.2.20 lacs as consortium @ Rs.44000/- to each of the claimants, and granted Rs.33,000/- towards loss of estate and funeral expenses. The compensation awarded by the Ld. Tribunal is reproduced hereunder in tabulated form:-

1.	Monthly income of deceased	Rs.8,827/-
2	Future prospects(40%) (Rs.8,827 + Rs.3,530=12,357)	Rs.12,357
3	Deduction for personal and living expenses (1/4th as there are five members (12357-3089)=9268	Rs.9,268/-
4.	Total yearly income	Rs.9,268 x 12 = Rs.1,11,216/-
5	Multiplier (Age 30 multiplier of 17 as per Sarla Verma's case)	Rs.1,11,216x17 = Rs.18,90,672/-
6	Consortium (44,000/- each)	Rs.2,20,000/-
7	Transportation and funeral expenses	Rs.33,000/-
	Total	**Rs.21,43,672/-**

10. I find no error whatsoever in the compensation as awarded by the Ld. Tribunal.

11. Accordingly, 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.

12. Dismissed.

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

11.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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