IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2445/2021

Date of decision:18/01/2023

Murti Devi and others

……………..Appellants

Vs.

Deep Chand and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gorav Kathuria, Advocate for the appellants

Nidhi Gupta, J.

CM 14256-CII OF 2021

Since there is delay of 140 days in filing the appeal, aforesaid application has been filed seeking condonation of said delay. The application is supported by an affidavit of Lalit Kumar-one of the appellants wherein the delay has been sufficiently explained.

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

Main Appeal.

Present appeal has been filed by the claimants, being mother, widow, and three sons of deceased Ajay Kumar, seeking enhancement of compensation of Rs.21,00,000/- granted vide Award dated 23.7.2019 passed by the Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') in MACP No.307/2018 under Section 166 of the Motor Vehicles Act,1988.

On the basis of material placed before it, the learned Tribunal concluded that deceased Ajay Kumar died due to injuries suffered by him in a motor vehicular accident that took place on 3.4.2018 due to rash and negligent driving of respondent no.1-Driver of Tata Motor LPT 2518 bearing registration NO. HR/38-P-3281 (for short 'the offending vehicle').

Learned counsel for the appellants seeks enhancement solely on the ground that the income of the deceased has been taken on lower side. It is submitted by ld. Counsel that the deceased was working as a Clerk with PW-3 Sh. Amit Singh, Advocate, Supreme Court and was drawing salary of Rs.20,000/- per month from his job. It is submitted that Ex. P7 is the Identity Card of the deceased and Ex. P2 is the Identity Card of the Lawyer on record to show that the deceased was actually employed with the Lawyer in the Supreme Court. It is submitted that despite these facts the learned Tribunal has taken the income of the deceased as only Rs.12,000/- per month on the basis of the fact that the deceased was 8th or 10th standard pass and had been working as a Clerk with the Advocate for almost 9 years. It is submitted that income of the deceased should be taken at least Rs.15-16,000/- per month as the same has been proved by the Lawyer with whom the deceased was working. Second contention of the learned counsel is that only Rs.20,000/- was awarded as consortium to mother of the deceased.

No other submission has been made on behalf of the counsel for the appellants.

Heard Ld. Counsel.

Perusal of the impugned Award shows that it has been recorded therein in para 17 as follows: -

> "17 Ex.P3 is the copy of Income Tax return for the assessment year 2015-16 in the name of PW3 Sh. Amit Singh revealing his income. It also reveals that an amount of 1,50,000/- had been paid to employees towards salary and wages. In the Income Tax return of next assessment year 2016-17 Ex.P4, salary and wages paid to the employees is shown to be *1,80,000/-. In the ITR for the assessment year 2017-18 Ex.P5, this amount is shown to be 1,91,200/ Details of salary paid to the employees is not shown in the ITR for the assessment year 2018-19 Ex.P6. It is rightly pointed out by learned counsel for the Insurance Company that word used in the Income Tax Returns is "employees" and so, it cannot be said that the amount shown to be paid to the employees pertains to only deceased Ajay. The name of Ajay as an employee is nowhere mentioned in the Income Tax returns of PW3 Sh. Amit Singh. PW3 himself admitted that he has no documentary proof to the effect that he was paying 20,000/- per month as salary to the deceased."

It accordingly, stands established that the income of the deceased as claimed by the claimants was not proven on record. Learned counsel for the appellants is unable to controvert the above findings of the learned Tribunal. Even now nothing has been placed on record to show that the deceased was earning more than Rs.12,000/- per month. Further, learned Tribunal has awarded compensation as per the following calculation: -

Sr. No.	Head of compensation	Amount (In rupees)
1	Loss of dependency	18,90,000/-
2	Funeral expenses	15,000/-
3	Loss of Estate	15,000/-
4	Loss of consortium to petitioner no.2-Widow.	40,000/-

5	Loss of filial consortium to petitioners no. 3 to 5-minor children of the deceased	1,20,000/- (40,000/- each)
6	Loss of filial consortium to petitioner no.1-mother of the deceased	20,000/-
	Total	21,00,000/-

In my view the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for interference is made out. No doubt Chapter-12 of the Motor Vehicles Act, 1988 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. 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 Versus 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.

18/01/2023 **(Nidhi Gupta)**
Joshi **Judge**

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