IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

242 **FAO-5082-2019 (O&M)**

Date of decision: 29.05.2023

Sushila Devi& Others

...Appellant(s)

Vs.

Sardar Mal Saini & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumit Sangwan, Advocate
for the appellants.

***

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,30,000/- granted by Motor Accident Claims Tribunal, Charkhi Dadri (hereinafter referred to as "the learned Tribunal") vide Award dated 03.05.2019 passed in MAC Petition No.34 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants/appellants are the widow, 22-year-old major son, 18-year-old major son and 94-year-old mother of deceased-Satbir, who was aged 42 years 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-Satbir had died in a motor vehicular accident that took place on 19.07.2017 due to rash and negligent driving of truck bearing registration No.RJ-14-2G-4342 (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 @ 9% 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 nothing has been granted by way of consortium to claimants No.2 to 4;

b) that income of the deceased from agriculture and dairy farming has not been taken into consideration while calculating compensation;

c) that interest has been granted only @ 9% per annum whereas the same deserves to be enhanced to 12%.

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

5. I have heard learned counsel for the appellants.

6. Perusal of impugned Award reveals that as no evidence in respect of age of the deceased was produced by the appellants, learned Tribunal took age of the deceased on the basis of his post-mortem report (Exhibit P6) as 42 years. As regards income of the deceased, though it was the pleaded case of the appellants that the deceased was earning Rs.55,000/- per month from agriculture work as well as dairy farming, however, no cogent evidence was produced or proved on record in this regard by the appellants. Even otherwise, as per established legal position, income from agriculture and dairy farming is

not to be considered/included while computing compensation payable under the Act as, the land as well as the milch cattle are still available to the appellants even after the death of the deceased. Therefore, there is no “loss of income” from the said sources. Accordingly, learned Tribunal had taken income of the deceased as Rs.8,000/- per month. As such, I find no error in the income so assessed by the learned Tribunal.

7. As deceased was 42 years of age at the time of death, learned Tribunal correctly made an addition of 25% towards future prospects (Rs.8,000/- + Rs.2,000/- = Rs.10,000/-) in accordance with law laid down by Hon’ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680.** As claimants are four in number, learned Tribunal made a deduction of 1/4th towards personal expenses in accordance with law laid down by Hon’ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104** (Rs.7,500/-). Thus, annual dependency came to be Rs.90,000/- (Rs.7,500/- x 12 = Rs.90,000/-). Learned Tribunal correctly applied multiplier of 14 in accordance with **Sarla Verma (supra).** Total dependency was therefore, correctly calculated to be Rs.12,60,000/-.

8. Learned Tribunal further awarded Rs.15,000/ towards loss of estate; Rs.40,000/- towards loss of consortium; and Rs.15,000/- for funeral expenses. Thus, granting a total compensation of Rs.13,30,000/-.

9. It has been submitted by learned counsel for the appellants that appellants No.2 to 4 were also entitled to consortium. However, as per latest judgment of Hon’ble Supreme Court in **Shri Ram**

General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023, reiterated by the Hon'ble Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022**, a sum of Rs.40,000/- "in toto" has to be awarded by way of loss of consortium. Even otherwise, Hon'ble Supreme Court in **"New India Assurance Co. Ltd. Vs. Vinish Jain & Others" Law Finder Doc ID # 977386** and this Court in **(P&H) Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136 and Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,** have held that major children of the deceased are not entitled to compensation. Learned counsel for the appellants is unable to dispute this legal position or show anything to the contrary.

10. 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.

11. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

29.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No