

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO 5417/2019(O&M)

Date of decision: 25.05.2023.

Balwinder Kaur and others

.....**Appellants**

Vs.

Davinder Singh and others.

.....**Respondents**

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arnav Sood, Advocate for the appellants.

Nidhi Gupta, J.

CM 18045-CII/2019

Since there is delay of 47 days in filing the appeal, instant 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.18,66,696/- granted by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal') vide Award dated 14.3.2019 passed in MACP-206/2017 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are widow and two major children of the deceased Jaswinder Singh who was 53 years of age at the time of 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 1.10.2017 due to rash and negligent driving of Alto Car bearing registration No. PB-18L-7551 (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% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

5. Ld. counsel for the appellants seeks enhancement of compensation on the sole ground that nothing has been granted by the Tribunal by way of consortium to claimants no. 2 and 3 who are the major son and major daughter respectively, of the deceased.

6. No other argument has been raised.

7. Heard ld. counsel.

8. Issue regarding grant of consortium is no longer res integra in view of latest pronouncement of Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023**; and reiterated by the Hon'ble Supreme Court in **Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022**; and in **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018**, wherein Supreme Court has categorically held that a sum of Rs.40,000/- "in toto" has to be granted by way of loss of consortium, and not Rs.40,000/- to each of the claimants.

Hon'ble Supreme Court has further held in the above said decision that a sum

of Rs.70,000/- in total is payable under the conventional heads i.e Rs. 40,000/- as consortium + Rs.15,000/- towards funeral expenses + Rs.15,000/- towards loss of estate.

9. Even further, admittedly, claimants no.2 and 3 are major children of the deceased. Nothing has been placed on record to prove their pecuniary dependence upon the income of the deceased. Thus, as per established position in law, they cannot be taken as a 'dependent' upon the deceased. In such circumstances, it has been held by the 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, that major children of the deceased are not entitled to compensation.

10. Ld. Counsel for the appellants is unable to dispute this position in law. 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.

- 11. Dismissed.
- 12. Pending application, if any stands disposed of.

25.05.2023.	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No