

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-3300-2013 (O&M)

Date of decision: 13.03.2023

Smt. Lilawati & Another

...Appellant(s)

Vs.

Gurnam Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Goyat, Advocate for the appellants.

Mr. D.K. Dogra, Advocate for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4,94,300/- awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as "the learned Tribunal") vide Award dated 15.01.2013 passed in Claim Petition No.101 of 2011 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants/appellants are widow and major son of deceased-Om Parkash.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Om Parkash had died due to injuries suffered by him in a motor vehicular accident that took place on 08.04.2011 due to rash and negligent driving of tractor bearing registration No.HR-08G-5206 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondents No.2 & 3 and insured by respondent No.4. Learned Tribunal awarded compensation as noted above

along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the ground;

a) that learned Tribunal assessed income of the deceased as only Rs.4,000/- per month. Deceased was an agriculturist and earning *“much more than the amount assessed by learned MACT”*. In fact, deceased was earning Rs.10,000/- per month and contributing his entire income for welfare of the family/appellants;

b) that no parental consortium has been granted to appellant No.2 who is the major son of the deceased;

c) that only Rs.20,000/- has been granted as consortium to appellant No.1/widow of deceased.

4. In response, it is submitted by learned counsel for respondent No.4;

a) that income of deceased has been rightly assessed by learned Tribunal;

b) that as per post mortem report, age of the deceased was 55 years at the time of accident. However, learned Tribunal has added 30% towards future prospects whereas keeping in mind age of the deceased the same should be @ 10% only.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. a) Perusal of record of the case shows that no evidence let alone cogent evidence was led by the appellants to prove income of the deceased. Learned counsel for the appellants has produced Minimum Wage notification No.28647-774 dated 05.09.2011 issued by State of Haryana applicable from 01.07.2011 as per which minimum wage of a skilled labourer is Rs.5,000/- per month. However, there is nothing whatsoever on record to remotely suggest that deceased was either an agriculturist or even a skilled worker. Accordingly, as per said notification, notional income of deceased is taken as Rs.4,643/- (rounded off to Rs.4,700/-) as admissible to an unskilled worker;

b) Admittedly, age of the deceased as per PMR was 55 years at the time of accident. Accordingly, future prospects @ 10% are applicable;

c) Admittedly, appellant No.2 is aged about 32 years and is a major son of the deceased. As per law laid down by Hon'ble Supreme Court in ***SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others"***; and of this Hon'ble Court in ***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***, it has been held that major sons being not dependent on deceased are not entitled to compensation. It is

accordingly, held that appellant No.2 is not entitled to any compensation. Even nothing has been stated or placed on record to show that appellant No.2 was dependent on the earnings of the deceased. However, appellant No.1 being widow of deceased is granted Rs.44,000/- towards spousal consortium; Rs.16,500/- towards funeral expenses; and Rs.16,500/- towards loss of estate. Accordingly compensation admissible to appellants is re-worked as under:-

HEAD	AMOUNT
Income	Rs. 4700+Rs. 470 (10% future prospects) = Rs.5,170/-
Annual income	Rs.62,040/-
Deduction	1/3 rd
Multiplier	11
Annual dependency	Rs.4,54,960/-
Spousal consortium to appellant No.1	Rs.44,000/-
Funeral expenses	Rs.16,500/-
Loss of estate	Rs.16,500/-
Total	Rs.5,31,960/- (rounded off to Rs.5,32,000/-)
Awarded by MACT	Rs.4,94,300/-
Enhanced by	Rs.37,700/-

8. Rate of interest shall be 7.5% on enhanced compensation from date of filing the petition till realization. Present appeal is accordingly, **disposed of** in above terms.

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

13.03.2023
Sunena

(Nidhi Gupta)
Judge

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