IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2828/2016
Date of decision: 28.03.2023

Rajbala and others

……..Appellants

Vs.

Sanjay Kumar and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Saurabh Dalal, Advocate
for the appellants

None for proforma respondents 1 and 2.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company

Nidhi Gupta,J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4.61 lakhs granted by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide Award dated 28.10.2015 in a claim petition bearing No.74/2014 under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants/appellants herein are widow and two major sons of deceased Ishwer Dutt.

Brief facts of the case are that the ld. Tribunal on the basis of pleadings and evidence before it concluded that the deceased Ishwer Dutt died due to injuries suffered by him in a motor vehicular accident that took place on 8.6.2014 due to rash and negligent driving of Truck bearing registration No. HP-64-7741 (hereinafter referred to as the 'offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein.

Ld. Tribunal awarded compensation as above alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization. Respondents herein were held jointly and severally liable to pay the compensation

Ld. Counsel for the claimants/appellants seeks enhancement of compensation primarily on the ground that the income of the deceased has been taken as Rs.6000/- per month which is on lower side. It is submitted that the deceased was working as Conductor and was earning Rs.15,000/- per month. It is submitted that the appellants/claimants had duly placed on record the salary certificate Ex.P5 to prove the said contention, however, ld. Tribunal has ignored the evidence led by the appellants in this regard and has taken income of the deceased as Rs.6000/- per month. It is further submitted that in view of the fact that claimants are three in number, a deduction of $1/4^{th}$ ought to have been made towards personal expenses, whereas the ld. Tribunal has made a deduction of $1/3^{rd}$. It is further submitted that rate of interest should be enhanced to 9% per annum. It is submitted that funeral expenses of Rs.25,000/- and consortium of Rs.1 lac as granted by the Tribunal is on the lower side and deserves to be enhanced.

In response it is submitted by the ld. Counsel for the respondent-Insurance Company that no evidence, whatsoever, was led by the claimant to prove the income of the deceased as Rs.15,000/- per month. It is submitted that at the relevant time minimum wages payable were Rs.5547/-

per month and ld. Tribunal has in fact taken income of the deceased on higher side. It is further submitted that claimants 2 and 3 are major sons of the deceased and accordingly deduction of 50% ought to have been made towards personal expenses as major sons cannot be held to be dependents of the deceased. It is further stated that no evidence, whatsoever, has been led by the claimants to prove the dependence of appellants 2 and 3 upon the deceased.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Perusal of the record of the case shows that the ld. Tribunal has computed the compensation payable to the claimants in the following manner: -

Income of the deceased was taken as Rs.6000/- per month in view of the fact that though it was submitted by the claimants that deceased was working as Conductor and was being paid a salary of Rs.15,000/- per month, no documentary proof in respect of said contention was placed on record by the claimants. Only salary certificate Ex.P5 was placed on record by the claimants. No documentary proof in the form of ITRs/ Audit account statement of the deceased and documentary record of the ESI/EPFO/ Labour Record etc. or even licence/badge of the deceased as Conductor was produced by PW3 Hem Chander- alleged employer of the deceased Ishwer Dutt. In this view of the matter, I find no error in the notional assessment of income of the deceased made by the ld. Tribunal. Age of the deceased was taken to be 64 years on the basis of Ex.R1/Aadhar Card of the deceased which shows his year of birth as 1950. Accordingly, ld. Tribunal correctly applied multiplier of 7. As the claimants are three in number deduction of 1/3rd was made. In actual fact as per law laid down by the 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 appellants 2 and 3 are not entitled to any compensation. Even nothing has been stated or placed on record to show that these appellants were dependent on the earnings of the deceased. Accordingly, deduction of 50% ought to have been made towards personal expenses. However, ld. Tribunal has made deduction of 1/3rd. Be that as it may, ld. Tribunal has applied multiplier of 7 and granted Rs.1 lac towards loss of consortium and love and affection and Rs.35,000/- towards funeral and transportation expenses. 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.

For the reasons stated above, finding no merit in this appeal the same is hereby dismissed.

(Nidhi Gupta)
Judge

28.03.2023
Joshi/ps-I

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