IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO NO. 4376 of 2015 (O&M)
Date of decision: 08/02/2023

SANTOSH AND ORS

…………Appellants.

VS

SHYAM SINGH AND ORS

……….Respondents.

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.SK Tripathi, Advocte for the appellants.

Mr.Vishal Yadav,Advocate for respondents 1 and 2

Mr. Ravinder Arora, Advocate with
Mr. Neeraj Khanna, Advocate for respondent no.3.

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<u>Nidhi Gupta, J.</u>

Present appeal has been filed by the appellants/claimants seeking enhancement of compensation of Rs. 11,90,700/- granted by the learned Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the learned Tribunal'), vide Award dated 25.11.2014 passed in MACT case No. 90 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988.

Learned Tribunal on the basis of the pleadings and evidence placed before it concluded that the deceased Satish Kumar had died due to the injuries suffered by him in a Motor Vehicular Accident that took place on 04.09.2013 due to the rash and negligent driving of HR-47-A-2015 (hereinafter referred to as 'the offending vehicle') being driven by respondent No. 1/driver, owned by respondent No. 2, and insured by respondent No. 3 herein. Claimants/appellants before this Court are the widow, three minor children and parents of the deceased Satish Kumar. Learned Tribunal awarded compensation as above along with interest at the rate of 7% per annum from the date of filing of petition till the date of realization. Learned Tribunal held the respondents jointly and severally liable to pay the compensation.

Learned counsel for the appellants assails the Award and seeks enhancement *inter alia* on the ground that the income of the deceased has been taken as Rs. 6,900/- only, which is on the lower side. It is submitted that the deceased was only 28 years old at the time of death, and was in good health and doing agricultural work as also running a dairy farm and he was earning Rs. 20,000/- per month. It is stated that thus, the ld. Tribunal is in error in not granting anything towards future prospects. It is further submitted that the Tribunal is in error in not applying the multiplier of 17 as the deceased was only 28 years of age at the time of death. It is further submitted that, nothing has been awarded as transportation charges, and the amount of Rs. 10,000/- awarded towards last rites of the deceased is on the lower side, and only Rs. 15,000/- has been granted as compensation towards loss of love and affection and the same is also on the lower side. It is further submitted that the deceased was the only son of his aged parents and therefore, the compensation ought to be enhanced.

Per contra it is submitted by learned counsel for the respondent-Insurance Company that no avocation of the deceased has been proved on record and therefore, there is no error in the assessment of the Tribunal in respect of the income of the deceased. It is further submitted that multiplier of 17 has been applied and the same in accordance with law laid down by the Hon'ble Supreme Court in case of **Sarla Verma vs. Delhi Transport**

Corporation (2009) AIR (SC) 3104. It is submitted that therefore, there is no error in the Award and the same ought to be maintained.

No other argument is raised on behalf of the parties.

I have heard learned counsel for the parties.

A perusal of the impugned Award shows that the learned Tribunal has calculated the compensation admissible to the claimants in the following manner:

Sr.No.	Head	Compensation
1	Treatment expenses	Nil (no evidence)
2	Special diet & attendant	Nil (no evidence)
3	Loss of consortium	Rs.1,00,000/-
4	Loss of estate	Rs.10,000/-
5	Expenses of last rites & transportation	Rs.10,000/-
6	Loss of love and affection	Rs.15,000/- (5000x3
7	Total dependency	Rs.10,55,700/-
	Total	Rs.11,90,700/-

In calculating the dependency of the deceased as 10,55,700/- the learned Tribunal has taken the income of the deceased as Rs. 6,900/- out of which deduction of 1/4th has been made in view of the fact that the claimants are 6 in number. The annual dependency of the deceased has been calculated as Rs. 6900 – 1/4th i.e. Rs. 1725 = Rs. 5175. Rs. 5175x12=Rs. 62,100/-. In conformity with the judgment of the Hon'ble Supreme Court in case of **Sarla Verma's** case (supra), multiplier of 17 has been applied as the deceased was 28 years at the time of death. In this manner, dependency of the claimants on the deceased has been calculated as Rs. 62100 x 17 = Rs. 10,55,700/-. I find no error in the above assessment.

As regards argument of the learned counsel for the appellants that income of the deceased has been wrongly assessed as Rs. 6900/- and is on the lower side, it was claimed by the appellants that the deceased was earning Rs. 20,000/- from agricultural income and also from the milk dairy being run by him. However, a perusal of the record shows that the appellants did not lead any evidence whatsoever in support of this contention. Learned Tribunal has recorded in Para 22 of the impugned Award that the claimants have not placed on record any jamabandi or any other revenue record to show that the deceased had any agricultural land. Even no evidence has been led regarding the assertion of the appellants that the deceased was running a milk dairy. It is on this basis that the learned Tribunal assessed the income of the deceased as Rs. 6,900/- on the basis of Notification No. 299/400 dated 09.03.2023 of the Deputy Commissioner, Rewari whereby the minimum wages of a labourer in the year 2013 had been fixed as Rs. 6,900/-. Even now, nothing has been placed before this Court in support of the appellants' contention. Thus, I find no error in the assessment made by the learned Tribunal in taking the notional income of the deceased as Rs. 6,900/-, especially in view of the fact that the avocation of the deceased was not proved on record.

Further, as per the law laid down by the Hon'ble Supreme Court addition by way of future prospects is not admissible to a person who is not having income from a permanent job.

Further, perusal of the impugned Award shows that Rs. 1,00,000/- has been granted by way of loss of consortium. Accordingly, the submission on behalf of the learned counsel for the appellants that only Rs. 15,000/- has been granted by way of loss of love and affection, is incorrect. Multiplier of 17 has been correctly applied in conformity with the judgment in case of **Sarla Verma's** case (supra). I find the amounts granted under the other conventional heads to also be just and proper in the facts and circumstances of the present case.

No doubt, Chapter XII 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. Moreover, compensation awarded upon the death of a near and dear loved one cannot be turned into a market negotiation, where every penny has to be calculated and drawn. 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 Vol. 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.

Accordingly, for the reasons afore-stated, I find no error in the impugned Award. The present appeal is therefore, dismissed.

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

February 08, 2023 **(NIDHI GUPTA)**
Jatin/joshi **JUDGE**

RAJINDER PARSHAD JOSHI
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I attest to the accuracy and
integrity of this document