IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213 **FAO-6259-2015 (O&M)**
Date of decision: 03.03.2023

Saraswati & Others **...Appellant(s)**

Vs.

Ram Swaroop & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Narender Kaajla, Advocate for the appellants.

Mr. Sandeep Suri, Advocate for respondent No.3.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,82,458/- awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as "the learned Tribunal") vide Award dated 20.02.2015 passed in Claim Petition No.239 of 2013 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). Claimants are wife, two major sons, one major daughter, and mother of deceased-Rajender.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Rajender had died due to injuries suffered by him in a motor vehicular accident that took place on 27.05.2013 due to the rash and negligent driving of Maruti car bearing registration No.HR-20Z-8118 (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. 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 compensation.

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

a) that learned Tribunal has failed to appreciate the fact that at the time of death the deceased was running a hotel under the name and style of Bharat Bhojnalaya, Near Durjanpur Mor, from where he was earning Rs.10,000 – Rs.12,000/- daily. It is submitted that therefore, learned Tribunal is in error in taking income of the deceased as only Rs.5,602/- per month on the basis of the Minimum Wage Notification issued by the Labour Commissioner at the relevant time in respect of a labourer. Learned counsel refers to judgment of Hon'ble Supreme Court in ***Civil Appeal No.6152 of 2021 titled as "Chandra @ Chanda @ Chandraram & Another Vs. Mukesh Kumar Yadav & Others".*** Relevant part of said judgment is reproduced hereinbelow:-

> *"……The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality…."*

b) Learned counsel further refers to judgment of this Court in case of ***FAO-2984-2003 titled as "Mrs. Raj Sharma & Another Vs. Ramesh & Others"*** to submit that in a case where accident had taken place in the year 2000, this Court had taken the income of the deceased therein as Rs.7,000/-. It is submitted that in the said case also the deceased was stated to have been running a Halwai Shop and earning Rs.15,000/- per month. It is accordingly, submitted in the present case the accident being of the year 2013, the income of the deceased could not have been taken as only Rs.5,602/- per month;

c) that hotel of the deceased was duly registered under Section 13 of the Punjab Shops and Commercial Establishment Act, 1958, and registration certificate was duly produced before the learned Tribunal as Exhibit P1 yet, learned Tribunal has assessed income on the lower side;

d) that learned Tribunal is in error in not considering claimants No.2 to 4 being major sons and major/married daughter of the deceased as dependents;

e) In support of his contentions, learned counsel refers to judgment of Hon'ble Supreme Court in case of ***Civil Appeal Nos.242-243 of 2020 title as "National Insurance Company Limited Vs. Birender & Others"***.

4. Per contra, it is submitted by learned counsel for respondent No.3 Insurance Company;

a) that there is no evidence whatsoever on record regarding any income of the deceased from the hotel. Learned counsel refers to testimony of PW4-Chander Pal who was an employee in the hotel of the deceased, who had stated by way of his affidavit Exhibit PW4/A that he was getting salary of Rs.10,000/- per month plus other facilities.

However, in his cross examination the said witness had admitted that deceased was not maintaining any record of salary. He had further deposed in his cross-examination that he did not know whether the deceased was paying any sales tax/VAT or income tax;

b) that in fact, compensation awarded is already on the higher side and deserves to be decreased as income of the deceased has already been taken as that of Minimum Wage admissible to a skilled worker, whereas in the present case there is no evidence that deceased was a skilled worker;

c) that deceased was 50 years of age at the time of death therefore, future prospects ought to have been given at the rate of 10% whereas learned Tribunal has added future prospects at the rate of 30%;

d) Rs.1,00,000/- has been granted on account of loss of consortium; and a further Rs. 1 lac has been granted towards loss of love and affection, which is also on higher side;

e) keeping in mind that there are five claimants, deduction of 1/4th ought to have been made towards personal expenses whereas deduction of 1/3rd has been made.

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 learned Tribunal upon appreciation of evidence and pleadings before it had

concluded that deceased was running a hotel under the name and style of Bharat Bhojnalaya. However, the learned Tribunal held that income of the deceased from said hotel had not been proven and therefore, learned Tribunal had taken income of the deceased as Rs.5,602/- per month as per Minimum Wage notification of the relevant year.

b) In my view, in this regard learned Tribunal has erred in ignoring the testimony of PW3-Satbir Singh, Labour Inspector. Testimony of said witness is available at page 107 of the Lower Court Record wherein the said witness has deposed as follows:-

> *"PW3 Satbir Singh, Labour Inspector, Hisar, Circle-III,*
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> *On s.a. Stated that I have brought the summoned record. As per record, registration certificate has been issued on 10.10.2012 in the name of Rajinder Singh s/o Mani Ram under the name of Establishment, Bharat Bhojnalya situated at G.T. Road, C Block, Hisar. As per my personal information, the said establishment is situated at Durjanpur turn, Hisar. As per my record, four persons were employment in the said establishment. Hotel was running as per norms of Punjab Shop & Commercial Establishment Act, 1958. Presently, the Minimum wages of an unskilled labour is Rs.5640/- per month as per letter of Labour Department. Copy of Registration certificate is Ex.P1.*
>
> *XXXXby learned counsel for respondents.*
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> *Registration certificate is valid upto March, 2015. Registration certificate is being issued after physical verification. There is no such record in writing with the department. Self-stated, I had physically inspected the spot. We have no record of checking after the registration certificate issued by the department. It is incorrect to suggest that I had not visited for physical verification before issuing registration certificate."*

c) In my view, from the above testimony, it stands established that the deceased was running a hotel which was duly registered with the Authorities, and in respect of which Registration

Certificate (Exhibit P1) was issued by the Authorities. Said testimony, as well as Exhibit P1/Registration Certificate bear out the fact that four persons were in the employment of the deceased. There is no reason to suspect or doubt the testimony of PW3/Labour Inspector. Thus, there is cogent evidence on record to show that deceased was, in fact, running an establishment in the name and style of Bharat Bhojnalaya which was duly registered with the Authorities, and had four full time employees. Needless to say, the deceased could not have been running this establishment without sufficient income there-from. Accordingly, in my view, it will be just and fair to take income of the deceased as Rs.10,000/- per month;

d) Income of the deceased from agriculture if any cannot be considered towards computing loss of income as, the said income is still available to the claimants/appellants.

e) As per postmortem report (Exhibit P2), age of the deceased was 50 years. Therefore, future prospects at the rate of 25% are admissible as per **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** (10,000 + 2500 = 12,500/-);

f) As there are five claimants, therefore, deduction of 1/4th has to be made; and multiplier of 13 has been correctly applied; thus, annual dependency is calculated to be Rs.14,62,500/- (12,500 - 3125 = 9375 x 13 = 1,21,875 x 12 = Rs. 14,62,500/-);

g) As regards conventional heads, Rs.16,500/- each towards loss of estate, and funeral expenses shall be granted;

h) Rs.44,000/- each shall be granted to claimants towards loss of consortium;

i) Thus, total compensation comes to

Awarded by MACT	Re-worked total compensation	Enhanced (re-worked – awarded)
Rs.9,82,458	**Rs.17,15,500/-**	**Rs. 7,33,042/-**

along with interest at the rate of 6% per annum on enhanced compensation from date of filing the claim petition till realization.

8. Ratio of apportionment and manner of disbursement of compensation amongst the claimants, as determined by the learned Tribunal is maintained.

9. Present appeal is disposed of in above terms.

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

03.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

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