IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 5278/2016(O&M)
Date of decision:11.04.2023

Amar Singh and another

………Appellants

Vs.

Sanjay Khan and another

………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamal Sharma, Advocate for the appellants.

Mr. D.K. Prajapati, Advocate for the respondents.

Nidhi Gupta,J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.3,61,000/- granted by the Ld. Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide Award dated 03.09.2015, passed in MACT Case No.165/2014 filed u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

Claimants/appellants herein are the two major sons of the deceased Harpo.

2. Brief facts of the case are that the learned Tribunal on the basis of the pleadings and evidence adduced before it concluded that the deceased Harpo had died due to injuries suffered by her in a motor vehicular accident that took place on 24.07.2014 due to rash and negligent driving of

Wagon-R Car bearing registration No.HR-51AX-1087 (hereinafter referred to as 'the offending vehicle'), being driven and owned by respondent No.1 herein, and insured by respondent No.2 herein. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Respondents were held jointly and severally liable to pay the above said compensation.

3. Learned counsel for the appellants/claimants seeks enhancement of compensation inter alia, on the ground that:

The income of the deceased has been taken on the lower side. It is submitted that though the deceased was working as a labourer, yet her income has been taken as only Rs. 4000/- per month. It is submitted that income of the deceased ought to have been taken as Rs.5341.51 rounded off to Rs.6000/-at least, as per the relevant Minimum Wage Notification as applicable from 01.01.2014 onwards. It is submitted that the occupation of the deceased as a labourer stood duly proved on record, despite that, the learned Tribunal has incorrectly assumed the deceased to be a domestic worker and has taken her income on the lower side.

3(i) Learned counsel refers to the testimony of PW-3/Sunil- eye-witness and complainant, who in his evidence/ sworn affidavit ExPW-3/A has deposed that on 24.07.2014 at about 9.30 AM when the deceased was doing labour work at the godown of Saru, he had gone there to ask the deceased about some other labourer when the accident in question had taken place due to the rash and negligent driving of the offending vehicle by respondent No.1.

3(ii) Learned counsel also refers to the FIR No.328 dated 25.07.2014 registered at Police Station Sector-7, Faridabad under Sections 279 and 304-A IPC, wherein the complainant/PW-3 Sunil has reiterated the same sequence of events. It is submitted that accordingly, from the testimony and statement of PW3 it is proven that the deceased was working as a labourer and therefore, her income ought to have been taken as Rs.6000/- as per relevant Minimum Wage Notification.

3(iv) It is next contended by learned counsel for the appellants that learned Tribunal has not granted anything by way of parental consortium to the claimants who are sons of the deceased.

3(v) It is further submitted that even nothing has been granted by way of future prospects, or even by way of loss of estate.

4. In response it is submitted by learned counsel for the respondent-Insurance Company that besides the bald statement of PW-3 Sunil, no evidence was produced by the claimants in support of their claim that the deceased was working as a labourer. It is submitted that no credence/weightage can be given to the testimony of PW-3 Sunil as he is admittedly nephew of the deceased. It is submitted that the FIR has been registered only qua the accident and no employer or employee of the godown where the deceased was allegedly working has been examined by the claimants to prove the employment/ income of the deceased. It is submitted that accordingly, there is no error made by learned Tribunal in assessing notional income of the deceased as Rs.4000/- per month.

4(i) It is further submitted that the deceased is not entitled to anything by way of future prospects as she was more than 60 years old at the time of death. It is submitted that learned Tribunal has not made deduction towards personal expenses and that even if income of the deceased were to be taken as Rs.6000/- then a deduction of 50% ought to has been made towards personal expenses which has not been done by the learned Tribunal and therefore, compensation would have worked out to be less than what has been awarded by the learned Tribunal.

4(ii) It is further submitted that during the pendency of the present appeal one of the claimants/appellant No.2, namely, Nanak has expired and his legal representatives have been impleaded. It is submitted that as per judgment of the Hon'ble Supreme Court in ***'New India Assurance Co. Ltd. Vs. Vinish Jain (SC): Law Finder Doc ID# 977386'*** it has been held that grand children cannot be taken as dependents of the deceased as they would be '*primarily dependent on their father and not on their grandfather*', which in the present case would mean the grandmother.

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

6. I have heard learned Counsel.

7. A perusal of the record of the case shows that it was the pleaded case of the claimants that the deceased was working as a labourer in the Kabadi godown and was earning Rs.9000/- per month from the said employment, besides the domestic work undertaken by the deceased. However, admittedly, no evidence was led by the claimant to prove said employment of the deceased. No doubt, PW-3 Sunil has deposed as noted above, that the deceased was doing the labour work at the Kabadi godown at the time of accident. Further, admittedly, eye-witness/complainant-PW/3 is a nephew of the deceased and therefore, his statement does not inspire

confidence regarding employment of the deceased as a labourer. Moreover, in my opinion, mere bald statement on part of the nephew of the deceased is not sufficient to prove her employment. In support of their case, the claimants ought to have examined the employer or any other employee of the godown where the deceased was alleged to have been working.

8. In this regard, it is also pertinent that as per Ex P-10 copy of the Aadhar Card of the deceased, date of birth of the deceased has been mentioned as 01-01-1951. Therefore, at time of accident, deceased would have been about 63 years of age. It is, therefore, unlikely that at that age the deceased would have been capable of working as a labourer.

9. Thus, I find no error in the assessment of notional income of Rs.4000/- per month as made by the learned Tribunal in view of the domestic services rendered by the deceased towards her family.

10. In this regard reference may be made to recent judgment of the Hon'ble Supreme Court in case of ***'Rajender Singh Vs. National Insurance Company Ltd. (SC): Law Finder Doc ID#1726401'***, wherein also, the deceased was a housewife of about 30 years of age and Hon'ble Supreme Court had assessed the notional income of the deceased therein as Rs. 5000/- per month.

11. As regards argument of the learned counsel for the appellants that income of the deceased ought to have been taken as Rs.6000/- per month as per the relevant Minimum Wage Notification, the same also deserves to be rejected as, learned Tribunal has made no deduction towards personal expenses. Admittedly, the appellants are major sons of the deceased and their pecuniary dependence on the income of the

deceased has not been proven on record either before the Tribunal, or before this Court. In view of this fact, ld. Tribunal ought to have deducted 50% of income of the deceased towards personal expenses. Admittedly, that has not been done. Thus, even if income of the deceased were to be taken as Rs.6000/- per month, after a deduction of 50% towards personal expenses, income of the deceased would have been Rs. 3000/- only. Accordingly, I see no ground to interfere in this respect as well.

12. As regards arguments of the learned counsel for the appellants that nothing has been granted by way of parental consortium to the appellants, the said argument also deserves to be rejected as admittedly, the appellants are major sons of the deceased. The Hon'ble Supreme Court in case of ***Vinish Jain*** **(supra)** has categorically held that major children being not dependent on the deceased are not entitled to compensation. Further, appellant No.2 is stated to have since expired and as per said relied upon judgment, grand children will not be entitled to compensation as they are primarily dependent on their father and not on the deceased. Even this Court in **Harpal Kaur and others v Sita Ram and others, Law Finder Doc Id # 921104; Narender Nayyar v Sheodan Singh and others, Law Finder doc Id # 626136;** and **Sajna Devi and others v Vijender Kumar and others, Law Finder Doc Id # 921100,** has held that deduction of 50% of income of the deceased therein towards personal expenses was rightly made as, the only dependent is widow, and major sons are not entitled to any compensation.

13. The learned Tribunal has awarded compensation to the appellants in the following manner:-

Sr.No.	**Head**	**MACT (in Rupees)**
1.	Monthly Income	40000/-
2.	Future prospects	Not applicable as the deceased was over 60 years of age.
3.	Deductions	Nil
4	Multiplier	7
5.	Loss of total dependency	4000x12=48000 48000x7=3,36,000/-
6.	Loss of Estate	Nil
9.	Funeral expenses	25,000/-
10.	Interest	7.5%
11.	Total	3,36,000+25000=3,61,000

14. As regards arguments raised by learned counsel for the appellants that nothing has been granted by way of loss of estate, perusal of the above shows that learned Tribunal had granted Rs.25000/- towards funeral expenses. As per law laid down by the Hon'ble Supreme Court in ***'National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680', 'Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another' and 'Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others',*** under conventional heads, Rs.15000/- is to be granted towards funeral expenses, and Rs.15000/- towards loss of estate. Thus, too, only Rs.5000/- more could have been granted toward loss of estate which amount is too small to merit the interference of this Court. Hon'ble Supreme Court in case of ***Vinish Jain***

(supra) has held that where difference in compensation payable is only about 5%, no interference is called for by the Courts.

15. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court in***State of Haryana v. Jasbir Kaur, (1999)1 SCC 90*** and ***Divisional Controller K.S.R.T.C. v. Mahadev Shetty, (2003) 7 SCC 197***, 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. 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 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.

16. In view of the above discussion, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly, stands **dismissed.**

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

11/04/2023 **(Nidhi Gupta)**
ps-I **Judge**

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