

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-4496-2022 (O&M)
Date of decision: 30.05.2023

Sanjna & Another

...Appellant(s)

Vs.

Vimal & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Anjali, Advocate for
Mr. Devender Arya, Advocate
for the appellants.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,78,555/- granted by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as "the learned Tribunal") vide Award dated 08.07.2022 passed in MACP/54/2021 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Three claimants were the widow, 18-year-old son, and 25-year-old daughter of deceased-Sombir who was aged 49 years at the time of death. Appellants before this Court are widow and major son of the deceased-Sombir.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Sombir had died in a motor vehicular accident that took place on 22.10.2020 due to rash and negligent driving of Alto car bearing registration No.DL-9C-AB-7039 (hereinafter referred to as 'the offending

vehicle'), being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation on the grounds:

a) that compensation as awarded by the learned Tribunal deserves to be enhanced as nothing has been granted by learned Tribunal by way of consortium. Even no addition has been made by way of future prospects, and nothing has been granted towards transportation expenses;

b) that Rs.15,000/- granted towards loss of estate and Rs.15,000/- granted on account of funeral expenses are on lower side and they deserve to be enhanced;

c) that income of the deceased has been assessed on lower side as only Rs.9,500/- per month whereas he was earning Rs.35,000/- per month.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. Perusal of record of the case shows that age of the deceased was determined to be 49 years on the basis of his Aadhaar card (Exhibit P8) wherein his date of birth has been mentioned as

01.01.1971. Though, it was the pleaded case of the appellants before the learned Tribunal that deceased was earning Rs.35,000/- per month from agriculture, animal husbandry and dairy farming, however, besides the bald statement of PW1/widow of the deceased/ appellant no.1 herein, no documentary evidence whatsoever in support of the alleged income has been produced by the appellants. As such, I find no error in the income taken by the learned Tribunal of the deceased as Rs.9,500/- per month, which was on the basis of the prevailing Minimum Wage for an unskilled worker.

7. As deceased was 49 years of age at the time of death, learned Tribunal has made an addition of 25% towards future prospects in accordance with law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**. Thus, submission of the learned counsel for the appellants that nothing has been granted by way of future prospects, is factually incorrect. Accordingly, monthly income of the deceased came to be Rs.11,875/- (Rs.9,500/- + Rs.2,375/-).

8. Admittedly, claimant No.3/daughter of the deceased/pro-forma respondent No.4 herein, is married and residing in her matrimonial home. Accordingly, learned Tribunal correctly did not consider her dependent upon income of the deceased, Therefore, claimants being two in number, learned Tribunal correctly made a deduction of $\frac{1}{3}^{\text{rd}}$ towards personal expenses. Therefore, monthly income

was calculated to be Rs.7,915/- i.e.(Rs.11,875/- - Rs.3,960/-); and annual income was Rs.7,915/- x 12 = Rs.94,980/-.

9. Further, deceased being 49 years at time of death, Learned Tribunal correctly applied multiplier of 13 in accordance with law laid down by Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104**. Thus, taking total dependency to be Rs.94,980/- x 13 = Rs.12,34,740/-. Learned Tribunal further awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses granting a total compensation of Rs.13,04,740/-. Thus, submission of the learned counsel for the appellants that nothing has been granted by way of consortium, is factually incorrect.

10. In my view, the above facts amply demonstrate that no case is made out that merits interference with the impugned Award. No doubt Chapter-12 of the Act 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 made a market negotiation, where every penny has to be calculated and drawn. Hon'ble Supreme Court in **State of Haryana Vs. Jasbir Kaur, (1999) 1 SCC 90** and **Divisional Controller K.S.R.T.C. Vs. Mahadev Shetty, (2003) 7 SCC 197**, has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. Thus, all that has to be

determined in the facts of a given case is, that the compensation accorded is 'just'. In my considered opinion, in the present case, the learned Tribunal has taken a very fair, just and rational view, 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 Vs. 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.

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

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

30.05.2023
Sunena

(Nidhi Gupta)
Judge

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