IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **FAO-5993-2016 (O&M)**
Date of decision: 17.02.2023

Smt. Meena & Others **...Appellant(s)**

Vs.

Sandeep & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Keshav Pratap Singh, Advocate for the appellants.

Mr.Vinod Chaudhri, Advocate for respondent No.3.

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NIDHI GUPTA, J.

CM-20436-CII-2016

This is an application under Section 151 CPC seeking exemption from filing certified copy and true typed copy of Award dated 09.05.2016 and permission to file photocopy of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions and photocopy of Award dated 09.05.2016 is taken on record.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.7,60,000/- awarded by Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as "the learned Tribunal") vide Award dated 09.05.2016 passed in MACT Case No.140 of 2012 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The claimants/appellants before this Court are the widow, parents and minor son of deceased-Chand Ram.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Chand Ram had died due to the injuries suffered by him in a motor vehicular accident that took place on 12.10.2012 due to the rash and negligent driving of truck bearing registration No.HR-46B-5116 (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. Learned Tribunal awarded compensation as noted above along with interest @ 8% per annum from the date of filing the petition till its actual realization.

3. Learned counsel for the appellants seeks enhancement of compensation primarily on the ground that income of deceased has been taken as only Rs.5,000/- per month which is on lower side. It is submitted that it has been proven on record that deceased was deriving income from agricultural land and also from dairy farming and was therefore, earning at least Rs.20,000/- per month. It is further submitted that learned Tribunal has ignored these facts and assessed income of the deceased as only Rs.5,000/- per month. It is further submitted that interest @ 8% per annum as granted by the learned Tribunal is also on lower side.

4. It is further submitted that nothing has been granted towards loss of love and affection and even no future prospects have been granted.

5. On the other hand, learned counsel for respondent No.3 submits that date of accident was 12.10.2012 therefore, judgment in case of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680** will not be applicable to the facts of present case.

6. It is submitted that appellants had not taken plea of consortium in their claim petition before the learned Tribunal and therefore, said plea cannot be available to them at this appellate stage. In support of his contention, learned counsel relies upon Division Bench judgment of this Hon'ble Court in case of ***FAFO No.3307 of 2004 titled as "National Insurance Co. Ltd. Vs. Mohanjit Kaur & Others"*** wherein it has been held that *"Motor Vehicles Act, 1988, Section 173- Appeal – Pleadings – Insurance Company contended that insured vehicle was not involved in the accident and claimants had played fraud upon it but this plea of fraud was not raised before the Tribunal in the written statement – Whether the plea of fraud can be raised for the first time in appeal – Held: no, it is settled proposition of law that facts not specifically pleaded cannot be proved; no evidence can be taken into consideration on facts which have not been pleaded."*

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties.

9. a) As per evidence of PW3-Pardeep, it has been stated that deceased-Chand Ram used to cultivate his land on lease, however, there is no evidence that deceased was earning any income from the agricultural land, or that he was running a milk dairy as has been asserted

by the appellants. In respect of evidence led by PW3-Pardeep to the effect that deceased was cultivating land of PW3, perusal of *jamabandi* Exhibit P3 shows that PW3 is not even recorded as owner of the land in said *jamabandi.* Accordingly, submission made on behalf of the appellants that deceased was having income from agriculture and dairy farming, is not proved;

b) It has further been proved on record by way of *jamabandis* Exhibit P1, Exhibit P3 and Exhibit P4 that appellants are co-sharer/co-owners of the agricultural land mentioned therein. In fact, Exhibit P1 shows that appellant No.1, widow of the deceased and her sons Sunil and Anil are owners-in-possession of the agricultural land mentioned therein. It is not the case of the appellants that they have inherited the said land from the deceased;

c) Moreover, it is established position in law that income from agriculture and dairy farming is not included while assessing income for purposes of computing compensation payable to claimants as, claimants are not deprived of the agricultural land and therefore, said income from land continues even after death of the deceased. Thus, there is no loss of agricultural or dairy farming income. As such, there is no merit in the argument raised by the learned counsel for the appellants;

d) Moreover, perusal of impugned Award shows that learned Tribunal has taken income of the deceased as Rs.5,000/- per month on basis of Minimum Wage notification at the relevant time;

e) Further, as there were five claimants, deduction of 1/4th has been rightly made towards personal expenses;

f) As per postmortem report, age of deceased was taken to be 42 years, and therefore, multiplier of 14 has been correctly applied;

g) On this basis, learned Tribunal has correctly calculated loss of dependency as Rs.45,000/- x 14 = Rs.6,30,000/-;

h) Rs.25,000/- has been granted towards funeral expenses;

i) Rs.5,000/- has been granted towards loss of estate;

j) Rs.1,00,000/- has been granted towards consortium;

k) Hence, total compensation awarded comes to Rs.7,60,000/-.

10. As per law laid down by the Hon'ble Supreme Court, this Court has to determine that compensation awarded is just and fair in the facts and circumstances of the case.

11. In my view, compensation awarded to the appellants is just and fair.

12. 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. 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 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.

13. Present appeal therefore stands dismissed.

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

17.02.2023 **(Nidhi Gupta)**
Sunena **Judge**

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