2023:PHHC:061335

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 6545/2016 (O&M)

Date of decision: 26.04.2023

Roshan Lal and others

……….Appellants

Vs.

Mahabir Singh and others

……….Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. BK Bagri, Advocate for the appellants.

Mr. Assem Aggarwal, Advocate for respondent no.3-Insu.Co.

Nidhi Gupta, J.

CM 22371-CII/2016

Since there is delay of 227 days in filing the appeal, aforesaid application has been filed.

Upon notice reply has been filed by respondent no.3.

Heard ld. Counsel for the parties.

For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Case.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4,65,500/- granted by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide Award dated 13.10.2015 in MACT Petition No. 135/2013 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are parents of deceased-Balraj.

Ld. Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 5.9.2011 due to rash and negligent driving of Swift car bearing registration No. HR-26-BK-4221 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 8% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several. However, the ld. Tribunal held the deceased guilty of contributory negligence to the extent of 30% in view of the fact that admittedly, at the time of accident the deceased was triple-riding on the motorcycle bearing registration No. HR-26-AG-2006 along with his father Roshan Lal and brother Ombir.

Ld. Counsel for the appellants seeks enhancement on the ground that the ld. Tribunal was in error in holding deceased guilty of contributory negligence in the absence of any evidence having been led by the respondents. It is submitted that thus, finding of the Tribunal is against the law and facts and is therefore, liable to be modified to the extent that deceased has been held guilty.

It is further submitted by the ld. Counsel for the appellants that compensation is liable to be enhanced as ld. Tribunal has taken the income of the deceased as only Rs.4000/- per month which is on the lower side, whereas as per relevant Minimum wage notification issued by the State of Haryana in the year 2011 notional income ought to have been fixed as Rs.5000/-.

It is further submitted that ld. Tribunal has granted only Rs.25,000/- towards loss of love and affection and therefore, amounts to be granted under the conventional heads also ought to be enhanced.

In response it is submitted by the ld. Counsel for the Insurance Company that there is no disputing the fact that the deceased was triple-riding on the motorcycle along with his father and brother. It is submitted that accordingly, finding of contributory negligence by the ld. Tribunal is correct as per law and facts, and does not deserve to be reversed.

As regards income of the deceased, it is submitted by the ld. Counsel for the Insurance Company that it is testimony of claimants' own witness PW-2Mange Ram that deceased was getting salary of Rs.4000/- per month and therefore, the claimants can not revert on their own evidence.

As regards enhancement under the conventional heads, ld. Counsel for the respondent Insurance Company submits that at the time of accident deceased was married with Smt. Munesh. It is submitted that it is the widow of the deceased who would be entitled to consortium who is however, not before this Court, and appellants would not be entitled to consortium. It is further submitted that as per latest judgment of Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023,** a total sum of Rs.30,000/- has to be granted towards loss of estate and funeral expenses, and ld. Tribunal has already granted Rs.25,000/- towards loss of love and affection, and therefore, there is a difference of only Rs. 5,000/- which does not call for interference by this Court.

No other argument has been raised.

Heard ld. Counsel for the parties.

Perusal of the impugned Award/record shows that it is undisputed that the deceased was triple-riding on the motorcycle alongwith his father and brother and in view of the same, the ld. Tribunal correctly came to the conclusion that the triple riding positively added to the unfortunate accident as a causative factor. I further concur with the percentage/ratio of contributory negligence attributed to the deceased and uphold the same.

As regards income of the deceased, perusal of the record reveals that admittedly PW2 Mange Ram in his affidavit Ex. PW2/A has stated that he had two acres of agriculture land in which deceased used to work, and for which work he was paying the deceased salary of Rs.4,000/- per month. Minimum wage notification issued by the State of Haryana, whereby it is claimed by the appellants that income of the deceased ought to have been taken as Rs.5,000/- per month, was neither produced before the ld. Tribunal nor before this Court. Moreover, appellants cannot renege on their own evidence as produced before the ld. Tribunal. Thus, I find no error in the assessment of income of deceased as made by the ld. Tribunal.

As regards conventional heads, ld. Counsel for the appellants is unable to dispute submission of ld. Counsel for the Insurance Company that the deceased was married at the time of accident. Accordingly, it is only the widow of the deceased who would be eligible for consortium, and not the appellants. However, widow is not before this Court. Moreover, Ld. Counsel for the appellants has shown no case law contrary to the latest judgment of Hon'ble Supreme Court in **Bhagat Singh's** case (supra) as per which a maximum sum of Rs.30,000/- can be granted for loss of estate and funeral expenses. In this case a sum of Rs.25,000/- has been awarded by the ld.

Tribunal which at best could have been enhanced to Rs.30,000/-. Accordingly, I see no ground to interfere on this head either.

Even if argument of the ld. Counsel for the appellants is accepted that the appellants are entitled to Rs.40,000/- towards loss of consortium, even then as per judgment of Hon'ble Supreme Court in the case of **New India Assurance Company Limited v Vinish Jain and others, Law Finder Doc Id # 977386,** it has been held that where the difference in compensation is about 4%-5%, it does not call for interference by this Court.

The above said judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in **The Managing Director, Divisional Controller Versus Alikutty and ors., Law Finder Doc Id # 1885188**. Relevant para 18 of the said judgment is reproduced below:-

> "18. It is to be borne in mind, the accident occurred on 23,2,2019. It is more than 2 ½ years since the respondents 1 to 4 have been knocking at the doors of the Courts seeking compensation on account of the death of the bread winner. It is trite law that the Tribunal is permitted to do some guess work and also exercise its discretion to fix the reasonable and just compensation, for which there cannot be any straight-jacket formula based on mathematical precision. In **New India Assurance Company v. Vinish Jain and others [(2018) 3 SCC 619]**, the Hon'ble Supreme Court has held that if the fixation of compensation is within permissible limits, the courts should normally not interfere with such awards".

Above said view has been reiterated by the Kerala High Court in **Reliance General Insurance Company Limited vs. Adila and others, Law Finder Doc ID # 1921609, paras 16 and 17** of which read as under:-

"16. The other area of dispute is that the Tribunal after awarding compensation under the conventional heads has awarded Rs.75,000/- towards loss of love and affection and Rs.10,000/- awarded towards pain and sufferings.

17. In **New India Assurance Co., Ltd v. Vineesh.J [2018 (3) SCC 619]**, the Hon'ble Supreme Court has held that the Appellate Court can permit variation of plus or minus 4 to 5 percent".

In the present case, ld. Tribunal has already granted Rs. 25,000/- towards loss of love and affection. Therefore, at best Rs.15,000/- more can be granted to the appellants by way of parental consortium. Thus, the difference in compensation payable being within 4% to 5% only i.e. within permissible limits, does not call for interference by this Court. No case law to the contrary has been cited by ld. Counsel for the appellants.

Even otherwise perusal of the impugned Award shows that the ld. Tribunal has made an addition of 50% towards future prospects. Given the fact that the deceased was 30 years of age at the time of death, future prospects ought to have been granted @ 40% in accordance with judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.** Thus ld. Tribunal has already granted in excess of compensation due to the appellants.

In my view, the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for interference is made out. 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. 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***, 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. 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.

Dismissed.

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

(Nidhi Gupta)
Judge

26.04.2023
Joshi

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