

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
227
FAO-1244-2017 (O&M)
Date of decision: 12.05.2023

Ram Kishan & Others

...Appellant(s)

Vs.

Sandeep & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Vijarania, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-3995-CII-2017

This is an application under Section 151 CPC seeking condonation of delay of 34 days in re-filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-3996-CII-2017

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 152 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.10,61,000/- granted by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as "the learned Tribunal") vide Award dated 11.09.2015 passed in MACT Petition No.104 of 2014 filed under Section 166 of the Motor Vehicles Act, 1988

(hereinafter referred to as “the Act”). The three claimants are the widower and two children of deceased-Kamlesh Devi @ Chameli who was aged about 46 years at the time of death.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Kamlesh Devi @ Chameli had died due to injuries suffered by her in a motor vehicular accident that took place on 24.06.2014 due to rash and negligent driving of bus bearing registration No.HR-61A-5431 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.4. Learned Tribunal awarded compensation as above along with interest @ 6% per annum from the date of filing the claim petition till realisation of the amount. Respondents were held jointly and severally liable to pay the amount of compensation.

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

a) that income of the deceased has been taken on lower side as only Rs.9,000/- per month. It is submitted that the deceased was earning about Rs.20,000/- per month by sale of milk, and she also used to sell 1-2 buffalos per year and was earning Rs.30,000/- therefrom. It is submitted that despite the fact that the claimants led cogent evidence in support of their said contention, learned Tribunal has taken income of the deceased as only Rs.9,000/- per month;

b) that nothing has been granted by way of future prospects and even amounts granted under loss of love & affection are on lower side and not as per law;

c) that interest has been granted only @ 6% whereas the same deserves to be enhanced to 12% and nothing has been given for child care.

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 though it was the pleaded case of the claimants before the learned Tribunal that the deceased was earning Rs.20,000/- per month from sale of milk and used to sell 1-2 buffalos per year and earning Rs.30,000/- therefrom yet, besides the oral evidence/bald statement of PW2-Sandeep in this regard, no other evidence was led by the claimants. PW2-Sandeep had deposed that he was a dairy owner, and had placed on record Exhibit P5 his account book of milk sold by him. However, in his cross-examination he has admitted that the said account book Exhibit P5 did not bear the name of the deceased. In his cross-examination he has also admitted that the said account book Exhibit P5 did not contain address of the deceased; nor did the said account book record the year in which sales were made; nor did it record that the deceased had sold one buffalo to PW2-Sandeep. Therefore, it is clear that besides the bald statement of the PW2, there was no other evidence on record to prove the income of the deceased from the said sources.

7. As regards argument of the appellants that notional income of the deceased as assessed by the learned Tribunal as Rs.9,000/- per month is on lower side, I find no merit in the same. In my view, learned Tribunal has placed a just and fair monetary value on the services rendered by the deceased as a housewife. Accordingly, I find no ground is made out to interfere in the same.

8. Further age of the deceased was proven to be 46 years at the time of death on the basis of her post-mortem report (Exhibit P2). Accordingly, learned Tribunal correctly applied multiplier of 13 and therefore, assessed loss of dependency as Rs.9,36,000/-.

9. As the claimants were three in number, learned Tribunal correctly made deduction of $\frac{1}{3}^{\text{rd}}$ towards personal expenses.

10. Under conventional heads, learned Tribunal granted Rs.1,25,000/- i.e. Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. It is therefore clear that the submission on behalf of the appellants that nothing had been granted

towards loss of love & affection is contrary to the record as learned Tribunal has awarded Rs.1,00,000/- towards loss of consortium/love and affection.

11. Even otherwise, the said amount is on the higher side as it has been held by Hon'ble Supreme Court in **Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023**, reiterated by the Hon'ble Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022**, that a total sum of Rs.70,000/- is to be granted under conventional heads whereas, in the present case, the learned Tribunal has awarded a sum of Rs.1,25,000/- under the conventional heads.

12. No judgment to the contrary has been cited by learned counsel for the appellants.

13. As regards argument of learned counsel for the appellants that nothing has been granted by learned Tribunal towards future prospects, I find no merit in the same as future prospects are added in cases where professional growth is anticipated in the career and income of the deceased. In the present case, admittedly the deceased was a housewife and therefore, the same would not hold true. Moreover, even otherwise, as has been noticed above compensation has already been awarded on the higher side. Even no judgement in support has been cited by learned counsel for the appellants.

14. I find the rate of interest of 6% as granted by learned Tribunal to be just and fair in the facts and circumstances of the case.

15. Accordingly, I find no case is made out that merits interference with the impugned Award. I find the compensation awarded to the appellants to be just and fair in the facts and circumstances of the case. 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 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 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.

16. I find the above said compensation to be just and fair in the facts and circumstances of the case. 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.

12.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No