2023:PHHC:043198

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1268/2017
Date of decision:23/03/2023

Phool Kali and others

………………Appellant

Vs.

Babu Alia

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Sharma Nabhewala, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants/appellants seeking enhancement of compensation of Rs.6,63,200/- awarded by the Motor Accident Claims Tribunal, Chandigarh, (hereinafter referred to as 'the Tribunal') vide Award dated 30.9.2016 passed in MACT Case No.378 of 30.10.2015 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are widow and three major children of deceased Moti Lal.

Ld. Tribunal on appraisal of pleadings and evidence led before it concluded that the deceased had died due to the injuries suffered by him in a motor vehicular accident that took place on 25.9.2015 due to rash and negligent driving of three wheeler bearing registration no. CH-04-L-3441 (hereinafter referred to as 'the offending vehicle'), being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein. Ld. Tribunal awarded compensation as above along with interest @

7.5% per annum. Respondents were held jointly and severally liable to pay the compensation.

Ld. Counsel for the appellants seeks enhancement of compensation on the ground that the deceased was an employee of M/s Kumar Atta Chakki and getting salary of Rs.15,000/- per month. It is submitted that appellants had led cogent evidence in support of employment of the deceased, however, despite that, the ld. Tribunal has taken the income of the deceased as Rs.6500/- per month only.

No other argument has been raised on behalf of the appellant.

Heard ld. Counsel.

Perusal of the record of the case shows that appellants/claimants had produced no record/ proof regarding the income of the deceased. It has been submitted by the ld. Counsel for the appellant that no evidence to the contrary has been produced by the respondents to disprove the employment of the deceased with M/s Kumar Atta Chakki. However, in my view the said argument is misplaced as the respondents would have been called upon to controvert only if evidence regarding income of the deceased had been led by the claimants/appellants.

Further, perusal of the impugned Award shows that appellants had examined PW1 Pardeep Kumar who stated that the deceased "*was doing the work of loading and unloading the goods. He was getting about Rs.15,000/- per month. He was working with M/s Kumar Provision Store for the last about 20 years*". Appellants also examined PW-3 O.P. Taneja, Proprietor of M/s Kumar Provision Store who is stated to have corroborated the fact that the deceased was being paid Rs.15,000/- per month as salary. However, admittedly, no evidence in support of the said statements was brought on record. In my view, in the absence of supportive evidence, in the form of books of accounts etc. of M/s Kumar Atta Chakki and M/s Kumar Provision Store to show that the deceased was being paid Rs.15,000/- per month as salary, the abovesaid testimonies of the abovesaid witnesses are rendered to be mere bald statements. Thus, I find no error in the assessment as made by the learned Tribunal in taking the income of the deceased as Rs.6500/- per month. There is nothing on record in the form of salary slip/ salary certificate/books of accounts of employer of the deceased to show the salary being paid to him. As such, notional income of the deceased has correctly been assessed as Rs.6500/- per month.

Further, age of the deceased was determined to be 58 years at the time of his death on the basis of Ex.C4 - Aadhar Card of the deceased wherein his date of birth was mentioned as 12.8.1957. Accordingly, ld. Tribunal has added future prospects @ 15%, which in actual fact, 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**, should have been 10%. Ld. Tribunal has thus, calculated annual income of the deceased as Rs.6500+975 (15%) = Rs.7475 per month x 12= Rs.89,700/-. Keeping in mind that the claimants are four in number, out of whom three were major children of the deceased, and hence, were not dependent on the deceased, ld. Tribunal made a deduction of 1/3rd from the income of the deceased towards personal expenses, rendering annual dependency to be Rs.59,800/-. Multiplier of 9 was correctly applied. Further an amount of Rs.25,000/- was awarded on account of funeral expenses, which as per prevalent law is Rs.16,500/-. Rs. 1 lac has been awarded to widow of the deceased on account of loss of consortium, which is also on the higher side, and should be Rs.44,000/- only.

It is therefore, apparent that the compensation as awarded by the ld. Tribunal in the present case is more than just and fair. 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, 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.

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

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

23/03/2023 **(Nidhi Gupta)**
Joshi **Judge**

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