2023:PHHC:043180

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4346/2017(O&M)
Date of decision:23/03/2023

Om Pati and another

………………Appellants

Vs.

Amit Nagpal and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kuldeep Khandelwal, Advocate for the appellants.

Mr. B.S.Taunque, Advocate for respondent no.3-Insu.Co.

Nidhi Gupta, J.

CM 13365-CII/2017

Aforesaid application u/s 5 of the Limitation Act, 1963 supported by an affidavit of appellant no.1, has been filed seeking condonation of delay of 321 days in fling the appeal.

Despite notice of the application, no reply to the said application has been filed.

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

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.10.97 lakhs granted by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') vide Award dated 2.2.2016 passed in MACT Case No.61/2014 filed u/s 166 of the Motor

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Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Claimants are the mother and major sister of the deceased-Sachin.

Ld. Tribunal on appraisal of pleadings and evidence led before it concluded that deceased Sachin had died due to injuries suffered by him in a motor vehicular accident that occurred due to rash and negligent driving of Maruti Car bearing registration No. HR-21H-3255 (hereinafter referred to as the 'offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. Ld. Tribunal awarded compensation as above along with interest @ 9% per annum. The 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 agriculturist and was also doing dairy farming, and earning Rs.35,000/- per month from both the pursuits. To prove the abovesaid income, besides affidavit Ex.PW1/A of appellant no.1, claimants examined Pardeep Kumar, PW3, Accountant of firm M/s Dhanpat Rai Bal Kishan, Jind, who produced 'J' Forms Ex.P4 to Ex.P6 which showed that the deceased had sold his crop on 17.11.2013, 13.1.2014 and 14.1.2014. Even as per testimony of PW4 Rajinder it has come on record that the deceased was running a dairy farm and used to sell his milk at Verka Society. It is submitted that accordingly, in view of this un-refuted evidence on record, ld. Tribunal was in error in taking the income of the deceased to be only Rs.6000/- per month as an unskilled casual labourer.

It is further submitted that nothing has been granted by way of consortium to the claimants. It is also submitted that as claimants were

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two in number, deduction of 1/3rd ought to have been made towards personal expenses whereas ld. Tribunal has deducted 50% towards the same. It is further submitted that the claimants were totally dependent on the deceased as there is no other earning male member in the family.

In response, it is submitted by the ld. Counsel for the respondent Insurance Company that the ld. Tribunal has added 50% towards future prospects whereas keeping in view the fact that the age of the deceased was 20 years at the time of his death, future prospects ought to have been added @ 40%. It is further submitted that the ld. Tribunal has awarded Rs.1 lac towards love and affection, which is on higher side. It is further submitted that notional income of the deceased of Rs.6000/- per month as taken by the Tribunal is as per minimum wages prevailing at the relevant time and therefore, the present appeal deserves to be dismissed.

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

Heard ld. Counsel.

Perusal of the record of the case shows that age of the deceased at the time of his death was determined to be 20 years on the basis of Ex.P2-Secondary School Certificate of the deceased wherein his date of birth was mentioned to be 6.8.1993. Though it was case of the appellants that the deceased had income from agriculture as well as dairy farming and the appellants had produced above-referred evidence in support of the said claim, however, it is an established position in law that income from agriculture is not to be counted while assessing compensation as agricultural land remains with the claimants even after the death of the victim. It has therefore, been held that there is no loss of income from agriculture.

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However, in the present case as the claimants are aged, widowed mother and sister of the deceased, admittedly there is no male member in the family to cultivate the land and grow crops in order to fetch income out of the agricultural land so left behind by the deceased. For that purpose, undoubtedly the claimants would have to engage farm labour, which involves payment of monthly wages to labour so engaged. Therefore, appellants are held entitled to a lumpsum compensation of Rs.2.50 lacs on account of deceased's labour/managerial skills. Reliance in this regard is placed upon judgment of the Hon'ble Supreme Court in **K.Ramya and others v National Insurance Co. Ltd., Law Finder Doc Id # 2042849,** wherein, in similar circumstances, Hon'ble Supreme Court has awarded a lumpsum of Rs. 2.50 lacs for the managerial skills which included work done by the deceased in respect of his agricultural land therein.

Further, though claimant no. 2 is admittedly major sister of the deceased, she is unmarried. Accordingly, in my view, dependency of the claimants upon income of the deceased stands established as there is no male member in the family. Therefore, a deduction of 1/3rd ought to have been made towards personal expenses. Further the claimants are entitled to Rs.16,500/- towards loss of estate, and Rs.16,500/- towards funeral expenses. Age of the deceased being 20, multiplier of 18 has rightly been applied by the ld. Tribunal. I further hold claimants/appellants entitled to consortium @ Rs.44,000/- each. As regards, future prospects, since the deceased was not a salaried person and his income has been taken to be that of a casual unskilled labourer, in my opinion, future prospects @ 40% is admissible in the present case.

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In view of the above, the compensation payable to the claimants is reworked as under:-

Sr.No.	Head	Compensation awarded by the ld. Tribunal (in Rupees)	Compensation reworked in the present appeal.
1.	Income	6000/-	6000/-
2.	Multiplier	18	18
3.	Deduction	1/2	1/3
4.	Total dependency	6000+3000 (50% future prospects) x 12-1/2 x 18= 9,72,000/-	6000+2400 (40% future prospects) x12 - 1/3 x 18 =12,09,600/-
5.	Lumpsum compensation for the managerial skills in respect of the deceased's agricultural land	-	2,50,000/-
6.	Funeral charges, conveyance expenses and loss of estate	25,000/-	33,000/- (16,500 towards funeral expenses and 16,500/- towards loss of estate)
7.	Towards love and affection	1,00,000/-	88,000/- (44000 x 2)
8.	Total	10,97,000/-	15,80,600/-/-
9.	Interest	9%	9%
10.	Enhanced by	4,83,600/-	

Ratio of apportionment and mode of disbursement of compensation, as determined by the Tribunal remains unchanged.

Appeal is accordingly, allowed in the above terms.

Pending applications, if any, stand disposed of.

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

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

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