IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 229/2018
Date of decision:16/03/2023

Anand

………………Appellant

Vs.

Naresh and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pankaj Mehta,Advocate for the appellant.

Nidhi Gupta, J.

Present appeal has been filed by the sole appellant/claimant seeking enhancement of compensation of Rs.2.25 lacs granted by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 23.8.2017 passed in MACP No.539/2016 in a claim petition u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Facts in brief are that the ld. Tribunal on the basis of pleadings and evidence before it concluded that the deceased Bhateri Devi died due to injuries suffered by her in a motor vehicular accident that took place on 22.3.2016 due to rash and negligent driving of Tralla bearing registration No. HR-39-B-9512 (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 @ 7.5% per annum from the date of filing of the claim petition till realization. Respondents were held jointly and severally liable to pay the compensation. Claimant is major son of deceased Bhateri Devi.

Ld. counsel for the appellant seeks enhancement of compensation on the sole ground that the appellant was dependent on the deceased mother and ld. Tribunal has wrongly held that appellant was self-dependent and has not considered other relevant documents pertaining to the point of dependency. It is stated that there is sufficient material on record to prove that the appellant was dependent upon the income of the deceased. It is submitted that in any case dependency cannot be considered only in terms of income especially when emotional dependency of the appellant upon his deceased mother has also to be considered. It is accordingly submitted that the claimant is entitled to enhanced compensation and that interest also ought to have been granted @ 12% per annum. It is further contended that even amounts awarded for loss of estate, transportation charges, funeral expenses and loss of love and affection are also on the lower side. It is further submitted that nothing has been awarded under the head of expectancy of life. It is submitted that deceased was registered labourer under MANREGA and therefore, she was earning Rs.15000/- per month by doing labour work in MANREGA and also by selling milk, however, income of the deceased has been taken as Rs.7000/- per month, which is on lower side.

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

Heard ld. Counsel.

Perusal of the record of the case shows that though the deceased was stated to be a registered labourer under MANREGA, however, as per cross-examination of PW2 Jitender Malik, it has come on record that the deceased had not worked under MANREGA after 9.7.2015 i.e. almost 8 months prior to the accident in question. As no other evidence was placed on record by the appellant regarding any other income of the deceased ld. Tribunal has assessed notional income of the deceased as Rs.7000/- per month. I find no error in the said assessment.

Though it was claimed that the deceased was 50 years old at the time of her death, however, Ex.P4 which is registration form of MANREGA, as well as Ex.P1 which is Job Card of the deceased, both depict age of the deceased as 52 years at the time of registration under MANREGA in 2008. Accordingly, ld. Tribunal has correctly taken the age of the deceased to be 60 years at the time of accident in 2016.

As regards dependency of the appellant, the appellant placed nothing on record to prove his dependency on the deceased. Ld. Tribunal has specifically noted in para 11 of the impugned Award that "*in the present case the claimant Anand is major and is aged 22 and is earning*". Even now, ld. Counsel for the appellant has been unable to prove his dependency on the deceased. In view of this fact, the ld. Tribunal has held that the appellant was not entitled to compensation for loss of income and had therefore, awarded compensation in the following manner, as detailed in paras 15 and 16 of the impugned Award:-

> *"15. In the facts and circumstances of present case in view of notional monthly income determined as 7,000/- as well as from age of deceased who was 60 years old it is clear that deceased must have been either contributing some amount for welfare of her son i.e. petitioner and her daughter or must be saving some amount for them. Untimely death of deceased, therefore, has caused loss of estate to petitioner & his sister which is assessed as 1,00,000/-.*
>
> *16. The claimant & his married sister shall also be entitled to*

compensation of 25,000/- as compensation for funeral and transportation expenses, and Rs.1,00,000/-- as compensation for loss of love and affection of the mother to the claimant & his sister. Petitioner along with his sister is therefore entitled to total compensation of Rs.2,25,000/-".

Thus, a total sum of Rs. 2.25 lacs was awarded to claimant and his married sister, who although was not a claimant, was granted compensation being daughter of the deceased.

Admittedly, appellant is aged about 22 years and is a major son of the deceased. As per law laid down by Hon'ble Supreme Court in ***SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others";*** and of this Hon'ble Court in ***Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136 and Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,*** it has been held that major sons being not dependent on deceased are not entitled to compensation. It is accordingly, held that appellant is not entitled to any compensation. Even nothing has been stated or placed on record to show that appellant was dependent on the earnings of the deceased.

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. 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.

16/03/2023 **(Nidhi Gupta)**
Joshi **Judge**

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