**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**241** **FAO-3136-2018**

**Date of decision: 12.04.2023**

**Ranjit Kaur & another**

**...Appellant(s)**

**Vs.**

**Manmohan Singh & Others**

**...Respondent(s)**

**CORAM:HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sanjeev Patiyal, Advocate for the appellant.

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**NIDHI GUPTA, J.**

1. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.18,84,400/- awarded by the learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the learned Tribunal") vide Award dated 15.12.2017 passed in MACT Case No.474/2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants were the widow, minor daughter and mother of deceased-Himmat Singh @ Sourav. Appellants before this Court are the widow and minor daughter of the deceased.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Himmat Singh @ Sourav had died due to injuries suffered by him in a motor vehicular accident that took place on 14.11.2016 due to rash and negligent driving of truck bearing registration No.PB-29-K-9151 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2 and insured by the respondent No.3 herein. Learned Tribunal awarded compensation as above along with interest @

9% per annum. Respondents were held jointly and severally liable to pay the above compensation of compensation.

3. Learned counsel for the appellants/claimants seeks enhancement of compensation primarily on the ground that the income of the deceased has been taken as only Rs.9,000/- per month. It is submitted that as evident from Ex.PW3/A, it has been proven on record that the deceased was the owner of a truck and was paying monthly instalments of Rs.25,570/- against the same. It is further submitted that in actual fact, deceased was earning more than Rs.40,000/- per month. However, his income has been wrongly assessed as only Rs.9,000/- per month. It is further submitted that nothing has been granted by way of funeral expenses and only Rs.40,000/- has been granted towards loss of consortium. It is lastly submitted that interest ought to have been granted @ 12% per annum and the amount of compensation may be enhanced from Rs.18,84,400/- to Rs.50 lacs along with interest @ 12% per annum.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. Perusal of impugned Award shows that age of the deceased was determined to be 23 years at time of death on the basis of Ex.P-3 Post Mortem Report of the deceased, as also on the basis of application form Ex.PW-3/A bearing date of birth of deceased as 04.11.1990. Though it has been stated by learned counsel for the claimants that the deceased was earning Rs.40,000/- per month, however, perusal of the record reveals that it has been admitted by PW-1-Darshana Kaur/claimant/appellant No.3 that she had no proof of income of the deceased as Rs.40,000/- per month. It has further been claimed on behalf of the claimants that the deceased was paying Rs.25,570/- per month as monthly loan instalment to finance his Truck bearing No.PB-32-P-0135, however, admittedly

Ex.PW-3/D statement of account of the deceased does not reflect any monthly instalments being paid by the deceased Himmat Singh. In this regard, testimony of PW-3 Shampy Sharma is also relevant who has admitted in his cross-examination that he had no knowledge as to who was operating the vehicle No.PB-32-P-0135; as also admitted that Ex.PW3/D, i.e. statement of account of the deceased, did not bear any signature and was not prepared in his presence, and he had only received the documents from the Branch. Even no certificate of Section 65-B of the Evidence Act was brought by PW-3 Shampy Sharma. Further, though the claimants had placed on record copy of registration certificate of the vehicle owned by the deceased as Ex.PX, however, the same did not reflect the income of the deceased. Even no driving licence of the deceased was placed on record by the claimants to show that the deceased was authorised to drive heavy motor vehicles. Even no documents to show education qualification of the deceased were placed on record by the claimants in support of their contentions. Accordingly, in my view, in these admitted facts and circumstances, the learned Tribunal has correctly assessed the notional income of the deceased as Rs.9000/- per month. I find no error in the said assessment made by the learned Tribunal as the same is just and reasonable.

7. As the claimants are three in number, learned Tribunal has correctly made a deduction of 1/3rd towards personal and living expenses. Therefore, annual dependency has been correctly calculated as Rs.72,000/- Rs. 6000x12). As deceased was 23 years of age at time of death, in conformity with the judgment of the Hon'ble Supreme Court in ***'National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680',*** Learned Tribunal has correctly added 40% towards future prospects as per which annual dependency come to Rs.1,00,800/-; and in conformity with '***Sarla Verma Vs. Delhi Transport Corporation 2009(3) RCR Civil 77',*** learned Tribunal has correctly applied the

multiplier of 18. Learned Tribunal has further granted Rs.15,000/- towards funeral expenses; Rs.40,000/- towards loss of consortium; and Rs.15000/- towards loss of estate. No doubt, in accordance with the abovesaid judgments, learned Tribunal could have awarded Rs.80,000/- more towards parental and filial consortium to claimants No.2 and 3 respectively. However, the difference in compensation, amounts to only Rs.80,000/-. The Hon'ble Supreme Court in case of ***'New India Assurance Company Ltd. Vs. Vinish Jain and others, Law Finder Doc ID#977386'*** as also in case of ***Pranay Sethi (supra)***, has held that where the difference in compensation is about 4% to 5% only, it does not warrant the interference by this Court as such variation in compensation is within permissible limits.

8. In the present case, the difference in compensation is only Rs.80,000/- i.e. less than 5%. Accordingly, I find no round is made out to interfere in the impugned award.

9. 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. 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 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.

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

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

**12.04.2023** **(Nidhi Gupta)**
Ps-I **Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**