IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

245 **FAO-5049-2018 (O&M)**
Date of decision: 17.05.2023

Mahinder Kaur & Others
...Appellant(s)
Vs.
Amar Singh & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Harish Sharma, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-16712-CII-2018

This is an application under Section 151 of Civil Procedure Code seeking condonation of delay of 29 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.7,56,000/- granted by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as "the learned Tribunal") vide Award dated 03.01.2018 passed in MACT Case No.4 of 28.02.2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The two claimants/appellants No.2 and 3 herein, are the major sons of the deceased-Paramjit Singh; whereas, appellant No.1 herein is the mother of the deceased who was impleaded as proforma respondent No.4 before the learned Tribunal.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Paramjit Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 07.12.2016 due to rash and negligent driving of mini bus bearing registration No.PB-10-ES-5854 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Pursuant to the accident, FIR No.90 dated 07.12.2016 was registered under Sections 304-A, 279 and 427 of the IPC. Learned Tribunal awarded compensation as above along with pendente lite and future interest @ 7.5% per annum from the date of filing the claim petition till realisation. 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.10,000/- per month. It is submitted that the deceased was an Ex-serviceman from Indian Army and was receiving a pension of Rs.15,418/- per month. However, learned Tribunal has not included said pension as income of the deceased while computing compensation;

b) that after his retirement, the deceased was also employed with Orion Security. It is stated that the learned Tribunal has acted on assumptions and presumptions and considered the monthly income of the deceased as Rs.10,000/- per month, which is contrary to the evidence placed on record as, as per salary certificate dated 06.03.2017 Exhibit C-5, issued by the employer Orion Security, the deceased was drawing the total salary Rs. 11,961/- per month (9500/- cash in hand + 1864/- as EPF + 592/- as ESI) as the deceased was deployed as driver in currency chest Dena Bank, Ludhiana on the ground that same was not proved through the witness from employer. Therefore, the salary certificate Exhibit C-5 should have been considered as the perusal of the same shows that ESI and EPF is being deducted by the employer, so the salary certificate could have been considered as genuine;

c) that while computing compensation, learned Tribunal has not taken into consideration the income from agriculture that the deceased was deriving from his seven acres of self-cultivated land. It is submitted that the claimants in support had placed on record Jamabandi (Exhibit C4) and therefore, learned Tribunal was in error in taking income of the deceased as only Rs.10,000/- per month;

d) that the learned Tribunal has made a deduction of 50% towards personal expenses whereas the claimants being 2-3 in number, deduction of 1/3rd ought to have been made;

e) that learned Tribunal ought to have granted Rs.15,000/- each to each of the three appellants i.e. Rs.45,000/- total towards loss of estate; and Rs.40,000/- each ought to have been awarded towards loss of consortium to both the sons.

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 age of the deceased was determined to be 52 years at the time of death on the basis of his post-mortem report (Exhibit P2).

7. It is the pleaded case of the claimants that the deceased was an Ex-serviceman from Indian Army and was receiving pension of Rs.15,418/- per month from the Army, and after retirement he had joint the Orion Safety Security Services Pvt. Ltd. and was doing the job as a Security Guard at Dena Bank, Samrala Chowk Branch, Ludhiana from where he was earning Rs.11,961/- per month. As noticed above, it is also the pleaded case of the claimants that the deceased was owner of seven acres of land which was self-cultivated.

8. However, it has been categorically recorded by the learned Tribunal that during cross-examination, claimant No.1/Jaspreet Singh as CW1 has admitted that "*his date of birth is 7.6.1992 and that of claimant No.2 is 3.12.1993 and, therefore, they both are major. He also conceded that the Army Pension of deceased cannot be given to them as they are major and the only person who could be entitled to draw this*

pension was their mother i.e. wife of deceased who unfortunately also is no more. CW1 also conceded that the land owned by deceased already has been mutated in the names of both claimants. Hence, there is no loss of income in this context. Claimant No.1 brought on record salary certificate of deceased as Ex.C5 and bank statement as Ex.C11 reflecting his salary but they have not examined any witness to prove the same. Even otherwise, the claimants are not entitled to compensation on account of loss of such income since they were not dependent upon him." It is in these circumstances, that the learned Tribunal assessed notional income of the deceased as Rs.10,000/- per month. I find no error whatsoever in the above said reason of the learned Tribunal. Claimants/appellants No.2 and 3 being major sons of the deceased are not entitled to compensation in view of law laid down by Hon'ble Supreme Court in **"New India Assurance Co. Ltd. Vs. Vinish Jain & Others" Law Finder Doc ID # 977386** and this Court in **(P&H) 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,** wherein it has been held that major sons of the deceased are not entitled to compensation.

9. As deceased was 52 years of age at the time of death, learned Tribunal correctly made an addition of 10% towards future prospects. As the appellant No.1 herein who is aged mother of the deceased was the sole dependent on the income of the deceased,

learned Tribunal correctly made a deduction of 50% towards personal expenses. In accordance with law laid down by the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** learned Tribunal correctly applied multiplier of 11 and thus, calculated dependency of the appellant No.1 herein to be Rs.7,26,000/-. Learned Tribunal further awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Compensation as awarded by learned Tribunal is in following manner in tabular form:-

Heads	**Amounts**
Income	Rs.10,000/- per month
Future prospects (10%)	Rs.10,000/- + Rs.1000/- = Rs.11,000/-
Deduction (50%)	Rs.11,000/- - Rs.5,500/- = Rs.5,500/-
Annual income	Rs.5,500/- x 12 = Rs.66,000/-
Multiplier (11)	Rs.66,000/- x 11 = Rs.7,26,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	**Rs.7,56,000/-**

10. Accordingly, in view of the discussion above, 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.

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

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

17.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No