IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 **FAO-5330-2018 (O&M)**
Date of decision: 29.05.2023

Suwinder Kaur & Others

...Appellant(s)

Vs.

M/S New Deep Bus Service (REGD) & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ankit Bhardwaj, Advocate for
Mr. Balbir Singh Jaswal, Advocate
for the appellants.

***

NIDHI GUPTA, J.

CM-17734-CII-2018

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 110 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.37,89,367/- granted by Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as "the learned Tribunal") vide Award dated 06.10.2017 passed in MACT Case No.324 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants are the widow, 30-year-old major daughter, 26-year-old major son, and 82-year-old mother of deceased-Sakattar Singh, who was aged 61 years at the time of death.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Sakattar Singh had died in a motor vehicular accident that took place on 26.08.2016 due to rash and negligent driving of bus bearing registration No.PB-30R-2978 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.2, owned by respondent No.1 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 6% 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 on the ground that in actual fact, the deceased was drawing a pension of Rs.32,000/-. However, learned Tribunal has taken pension of the deceased as only Rs.28,000/-. It is further submitted that the deceased was doing tuition work from which he was earning Rs.10,000/- per month; and was also doing agricultural work from which he was earning Rs.1,00,000/- per month. However, the said income has not been considered and included by the learned Tribunal while calculating compensation.

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

5. I have heard learned counsel for the appellants.

6. Perusal of the record reveals that date of birth of the deceased was 30.08.1955 as evident from Aadhaar card of the deceased (Exhibit P159). Deceased was therefore, 61 years old at time of death. It is undisputed that the deceased was a retired Government employee of the Education Department and copy of his pension payment order is Exhibit P29. Exhibit P30 is the statement of pension account of the deceased which reveals that the deceased was getting a monthly pension of Rs.28,208/- at the time of death. Accordingly, there is no merit in this argument raised by the learned counsel for the appellants.

7. As regards agricultural income, it is established legal position that the same is not to be included/considered while computing compensation payable under the Act as the land in ownership of the deceased is now being cultivated by the claimants. No evidence was led by the claimants in respect of any income from tuition work undertaken by the deceased. Learned Tribunal had taken annual income of the deceased as Rs.5,83,013/- on the basis of average of income depicted in the income tax returns of the deceased for the assessment years 2014-15 to 2016-17 (Exhibit P16 to Exhibit P18). As per Exhibit P16, total income of the deceased for assessment year 2014-15 was Rs.6,36,737/- and he paid tax worth Rs.37,348/-. As per Exhibit P17, total income of the deceased for assessment year 2015-16 was Rs.6,95,428/- and he paid tax worth Rs.35,109/-. As per Exhibit P18, total income of the deceased for assessment year 2016-17 was Rs.5,02,308/- and he paid tax worth Rs.11,849/-. I find no error whatsoever in the same.

8. Of the four claimants, two were major children of the deceased. Thus, learned Tribunal correctly made a deduction of 1/3rd towards personal expenses as in real terms, dependents upon the deceased were only the claimant No.1/widow of the deceased, and claimant No.4/82-year-old aged mother of the deceased. Accordingly, annual dependency was worked out to Rs.3,88,675/-. As deceased was more than 61 years old at the time of death, learned Tribunal correctly applied multiplier of 7, thus, taking total compensation to be Rs.27,20,725/-. Learned Tribunal further granted Rs.9,43,642/- as reimbursement of medical bills produced by the appellants. Under the conventional heads, learned Tribunal granted Rs.25,000/- as funeral expenses and Rs.1,00,000/- on account of loss of consortium. Thus, totalling to total compensation of Rs.37,89,367/-.

9. In my view, the above facts amply demonstrate that no case is made out that merits interference with the impugned Award. 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 opinion, in the present case, the learned Tribunal has taken a very fair, just and rational view, 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.

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.

29.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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