IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

243 **FAO-5333-2018 (O&M)**
Date of decision: 16.02.2023

Roshni & Others **...Appellant(s)**

Vs.

Hari Shanker & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Naresh Kaushik, Advocate for the appellants.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.16,36,000/- awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as "the learned Tribunal") vide Award dated 05.02.2018 passed in MACT Case No.43 of 2016 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). The claimants are widow and three major children of deceased-Balwan Singh.

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Balwan Singh had died due to the injuries suffered by him in a motor vehicular accident that took place on 08.01.2016 due to rash and negligent driving of truck bearing registration No.MP-09HH-1801 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3 herein. Learned Tribunal awarded compensation as noted above along with interest @ 9% per annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

Learned counsel for the appellants submits that compensation awarded by learned Tribunal deserves to be enhanced as nothing has been granted to the claimants by way of loss of income. It is stated that at the time of death the deceased was drawing pension of Rs. 29,393/- per month, and appellant/claimant No.1 is now drawing family pension and claimants are therefore, entitled to compensation under loss of income.

It is submitted that the deceased was also earning Rs.80,000/-per annum from agriculture, but this income of the deceased has been discounted by the learned Tribunal.

It is further submitted that nothing has been granted on account of future prospects, love and affection, and very meager amount has been granted under other conventional heads to the claimants.

No other argument is raised on behalf of the appellants.

I have heard learned counsel for the appellants.

Admittedly, at the time of death, the deceased was 60 years old and drawing pension of Rs.29,393,/- as he was retired from Agricultural Department as reflected in Exhibit P17 which is the statement of account of the deceased. It is established position in law, that agricultural income of the deceased if any, cannot be taken into account for the purpose of assessing his income as, income from agricultural land will continue for the claimants and therefore, they will suffer no loss of income from agriculture. Accordingly, the learned Tribunal had taken income of the deceased as Rs.29,000/-per month.

Learned Tribunal had made deduction of 50% towards personal expenses as widow of the deceased was the only dependent. I find no error in the reasoning of the learned Tribunal in holding the appellant No.1 as the sole dependent of the deceased. In this regard, reliance may be placed upon Para 15 of judgment of the Hon'ble Supreme Court in ***Civil Appeal No.3483 of 2008 titled as "Sarla Verma & Others Vs. Delhi Transport Corporation & Another"*** which is reproduced hereinbelow:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

In the present case, the claimants 2-4 are admittedly, major children of the deceased aged 30 years, 36 years and 34 years respectively. Accordingly, as per the legal principle enunciated hereinabove, they cannot be considered dependents of the deceased.

In this regard, I also rely upon judgments 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,*** wherein it has been rightly held by this Court that deduction of 50% was rightly made as only dependent is the widow, and major children are not entitled to any compensation. Moreover, in the present case, it is not the case of the claimant-children that they were residing with the deceased and were relying on him for their basic amenities.

Further, as deceased was 60 years old at the time of death, multiplier of 9 was applied and compensation was assessed as Rs.15,66,000/-.

Besides this, the learned Tribunal also granted Rs.15,000/- towards funeral expenses and conveyance charges; and Rs.15,000/- towards loss of estate. Appellant/claimant No.1 was also granted Rs.40,000/- towards consortium. In this way, the learned Tribunal granted total compensation of Rs.16,36,000/- to the appellants/claimants.

Learned Tribunal further directed that 50% of the total compensation i.e. Rs.8,18,000/- with proportionate interest shall be received by appellant/claimant No.1 being widow and dependent of the deceased; while remaining 50% amount along with proportionate interest would be shared amongst appellants/claimants No.2 to 4.

Accordingly, I find no error in the compensation as assessed by the learned Tribunal, which is in conformity with the law laid down by the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

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 nearand 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.

I find the above compensation granted by the learned Tribunal to be just and fair in the facts and circumstances of the case. Accordingly, present appeal stands, dismissed.

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

16.02.2023 **(Nidhi Gupta)**
Sunena **Judge**

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