IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **FAO-6353-2018 (O&M)**
Date of decision: 02.03.2023

Naresh Singh & Another **...Appellant(s)**

Vs.

Vinay Kumar & Others **...Respondent(s)**

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

Present:- Mr. Vikas Lochab, Advocate for the appellants.

Mr. Sachin Gupta, Advocate for respondent No.3.

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NIDHI GUPTA, J.

CM-22141-CII-2018

This is an application under Section 151 CPC seeking exemption from filing typed copy of Award dated 24.10.2017.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-22142-CII-2018

This is an application under Section 5 of the Limitation Act for condonation of delay of 159 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the appellants seeking enhancement of compensation of Rs.12,31,000/- awarded by Motor

Accident Claims Tribunal, Sonepat (hereinafter referred to as "the learned Tribunal") vide Award dated 24.10.2017 passed in MACP Case No.457 of 2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are parents of the deceased-Amresh Kumar.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Amresh Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 22.02.2015 due to rash and negligent driving of car bearing registration No.DL-8CL-5351 (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. Learned Tribunal awarded compensation as noted above along with interest @ 7% per annum from the date of filing the petition till its actual realization.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the ground;

a) that nothing has been granted by way of filial consortium to the claimants;

b) that income of the deceased as been taken as only Rs.8,000/- per month whereas the same should have been taken as Rs.11,000/- per month;

c) that addition of future prospects @ 50% is on lower side as deceased was only 29.5 years of age at the time of death;

d) that amounts awarded under conventional heads are on lower side;

e) that interest should have been granted @ 18% per annum.

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

5. Per contra, learned counsel for respondent No.3 submits;

a) that future prospects have been granted @ 50% whereas the same should have been @ 40%;

b) there is no evidence regarding income of the deceased and therefore, there is no error in the impugned Award.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows;

a) that though it has been claimed by the appellants that deceased was 29.5 years of age at the time of accident, however, no documentary proof in support of this contention to prove age of the deceased has been placed on record; whereas, as per copy of MLR, age of the deceased is shown to be 32 years. Accordingly, age of the deceased will be taken as 32 years at the time of accident;

b) It has been claimed by the appellants that deceased was doing labour work and earning Rs.11,000/- per month. However, no proof regarding income of the deceased is on record. Accordingly, I find assessment of notional income as made by learned Tribunal @ Rs.8,000/- per month to be just and fair in the facts and circumstances of the case;

c) Addition of 40% towards future prospects ought to have been made in accordance with the judgment of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104;**

d) As deceased was a bachelor at the time of accident, deduction of 50% towards personal expenses is correct;

e) Multiplier of 16 is correctly applied;

f) Rs.50,000/- has been awarded towards loss of love and affection;

g) As per 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 Vs. Pranay Sethi and Others (2017) 16 SCC 680,** Rs.40,000/- each is to be granted towards filial consortium to each of the claimants i.e. Rs.80,000/-; plus Rs.15,000/- for transportation; and Rs.15,000/- for funeral expenses. Thus total compensation, if calculated as per law, comes to Rs.11,85,200/-. It is therefore, clear that compensation of Rs.12,31,000/- granted to the appellants is already in excess of the compensation admissible to them.

8. 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.

9. Accordingly, I find no merit in the present appeal and the same is hereby **dismissed**.

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

02.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

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