IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 6886/2018 (O&M)

Date of decision: 18.04.2023.

Indrawati and another

………………Appellants

Vs.

Ramesh @ Dhari and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Ramender Chauhan, Advocate, for the appellnats.

Nidhi Gupta, J.

CM 6338-CII/2023

Prayer in the said application is for restoration of the main appeal which was dismissed in default vide order dated 21.3.2023. The application is supported by an affidavit of the counsel for the appellants.

For the reasons stated in the application, the same is allowed, order dated 21.3.2023 is recalled, and the appeal is restored to its original number.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.50,76,688/- granted by the Ld. Motor Accident Claims Tribunal, Bhiwani, (hereinafter referred to as 'the Tribunal') vide Award dated 31.5.2018 passed in Claim Petition No.162 of 2016/2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Claimants/appellants herein are parents of the deceased Ashok Kumar.

Ld. Tribunal on the basis of pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 20.11.2015 due to rash and negligent driving of truck bearing registration No. HR-63-B-6559 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above alongwith interest @ 6% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

It is to be noted that a connected claim petition bearing No.155/2016 in respect of same accident was also filed by Smt. Poonam, widow of the deceased-Ashok Kumar. Vide impugned Award dated 31.5.2018, ld. Tribunal while disposing of both petitions, had directed that out of compensation of Rs.50,76,688/-, Rs.40,000/- be given as loss of consortium to Smt. Poonam in cash, and the remaining amount of compensation shall be divided in equal shares between appellant no. 1 herein Indrawati, and Smt. Poonam, widow of the deceased.

Ld. counsel for the appellants-parents of the deceased-Ashok Kumar assails the Award on the singular ground that nothing has been granted to the claimants by way of parental consortium. It is further submitted that at the time of accident the deceased was not on talking terms with his wife - Smt. Poonam. It is stated that Smt. Poonam had also filed cases against the deceased and despite this fact, ld. Tribunal has granted compensation in equal share to wife and mother of the deceased, which is incorrect.

It is further submitted that salary of the deceased was proposed to be enhanced to Rs.60,000/- per month on account of 7th Pay Commission and therefore, ld. Tribunal was in error in taking the income of the deceased as Rs.26,659/- per month only. It is further submitted that deceased was 38 years of age at the time of accident and therefore, multiplier of 25 ought to have been applied whereas ld. Tribunal has applied multiplier of 16.

No other argument has been raised.

Heard ld. counsel.

Perusal of the impugned Award as well as record of the case shows that at the time of his death deceased was serving in the Ministry of Defence and posted as Painter (Civilian Non-gazetted staff). Age of the deceased at the time of his death was determined as 34 years on the basis of Salary Certificate Ex. PW1/A wherein date of birth of the deceased is recorded as 5.3.1981. As per said Salary Certificate, which was duly proved on record by PW1 LDC Subhash Chand, Air Force, Central Accounts Office, New Delhi, salary of the deceased was Rs.26,659/- per month. Accordingly, the ld. Tribunal has correctly taken the salary of the deceased as Rs.26,659/- per month. As deceased was 34 years old at the time of his death, ld. Tribunal granted 50% on account of future prospects as per which monthly income of the deceased was calculated at Rs.39,988.50 and annual income as Rs.4,79,862/-. Claimants were three in number and as dependency of two claimants was established, ld. Tribunal correctly made a deduction of 1/3rd towards personal expenses. Thus, annual income came to be Rs.3,19,908/-. After deduction of income tax, annual income was calculated as Rs.3,12,918 to which ld. Tribunal applied multiplier of 16 taking total dependency to be Rs.50,06,688/-. Multiplier of 16 has been correctly applied and the ld. Tribunal has also granted addition of 50% towards future prospects as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

Ld. Tribunal has further granted Rs.40,000/- to Smt. Poonam widow of the deceased/ proforma respondent herein, towards loss of consortium. Appellant no.1 alongwith Smt. Poonam were granted Rs.15,000/- towards loss of estate, and Rs.15,000/- towards last rites. Ld. Tribunal further held that dependency of appellant no.2/father of the deceased, was not proven upon the deceased, and accordingly, claim petition qua claimant/ appellant no. 2 herein, was dismissed. Even now nothing has been produced before this Court to show that appellant no. 2 was pecuniary dependent upon the deceased.

As regards argument on behalf of the appellants that nothing has been granted by way of filial consortium to the appellants/ parents of the deceased, I find no merit in the said argument. As per latest judgment of the Hon'ble Supreme Court **Civil Appeal Nos. 2410-2412 of 2023 Shri Ram General Insurance Com. Ltd. vs. Bhagat Singh Rawat & ors.** it has been held that *total* amount payable under head of consortium is Rs.40,000/-; meaning thereby that consortium in toto of Rs. 40,000/- has to be granted, and each of the claimants are not entitled to consortium of Rs. 40,000/- each.

Even otherwise, even if plea of the appellants were to be accepted, at best Rs.80,000/- more would have been awarded towards filial consortium to the appellants. The difference in compensation therefore, comes 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'**, has held that where the difference in compensation is about 4% to 5% only, it does not warrant interference by this Court as, such variation in compensation is within permissible limits.

This abovesaid judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in **The Managing Director, Divisional Controller Versus Alikutty and ors., Law Finder Doc Id # 1885188**. Relevant para 18 of the said judgment is reproduced below:-

> "18. It is to be borne in mind, the accident occurred on 23,2,2019. It is more than 2 ½ years since the respondents 1 to 4 have been knocking at the doors of the Courts seeking compensation on account of the death of the bread-winner. It is trite law that the Tribunal is permitted to do some guess work and also exercise its discretion to fix the reasonable and just compensation, for which there cannot be any straightjacket formula based on mathematical precision. In ***New India Assurance Company v. Vinish Jain and others [(2018) 3 SCC 619]***, the Hon'ble Supreme Court has held that if the fixation of compensation is within permissible limits, the courts should normally not interfere with such awards".

Above said view has been reiterated by the Kerala High Court in **Reliance General Insurance Company Limited vs. Adila and others, Law Finder Doc ID # 1921609**, paras 16 and 17 of which read as under:-

> "16. The other area of dispute is that the Tribunal after awarding compensation under the conventional heads has awarded Rs.75,000/- towards loss of love and affection and Rs.10,000/- awarded towards pain and sufferings.
>
> 17. In ***New India Assurance Co., Ltd v. Vineesh.J [2018 (3) SCC 619]***, the Hon'ble Supreme Court has held that the Appellate Court can permit variation of plus or minus 4 to 5 percent."

Further, ld. Tribunal has recorded a categorical finding that parents of the deceased/ appellants herein have not been able to place on record any document that would show that the marriage between the deceased and his wife Smt. Poonam had been dissolved by a decree of divorce. Accordingly, I see no reason to interfere with the apportionment of compensation as made by the ld. Tribunal.

As regards argument of the ld. counsel that the salary of the deceased was proposed to be enhanced to Rs.60,000/- per month as per 7th Pay Commission, I find no merit in the said argument as income of the deceased has to be taken as per last drawn salary.

Accordingly, in view of the above discussion, the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for interference is made out. 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. 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.

Dismissed.

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

18/04/2023. **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned Yes
Whether reportable Yes/No