

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
224
FAO-6931-2018 (O&M)
Date of decision: 02.05.2023

Nanda Devi & Others

...Appellant(s)

Vs.

M/s Varaha Infrastructure Ltd. & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Upender Prasher, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-24452-CII-2018

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 36 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 claimants seeking enhancement of compensation of Rs.7,35,000/- granted by Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as "the learned Tribunal") vide Award dated 31.03.2018 passed in MACP Case No.29 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Three claimants are the widow, 27-year-old son, and 25-year-old daughter of deceased-Moti Ram.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that

deceased-Moti Ram had died due to injuries suffered by him in a motor vehicular accident that took place on 23.12.2015 at about 02:45 pm due to rash and negligent driving of truck bearing registration No.HR-46C-4471 (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 pendente lite and future interest @ 7.5% per annum from the date of institution of claim petition till realisation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds that:

a) that income of the deceased has been taken as only Rs.7,000/- per month which is on lower side. It is submitted that the deceased was working as Supervisor in a factory at Amritsar and was getting salary of Rs.10,000/- per month;

b) that consortium of only Rs.40,000/- has been awarded by the learned Tribunal to claimant No.1, and nothing has been awarded by way of consortium to claimants/appellants No.2 and 3.

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 though it was the pleaded case of the appellants that the deceased was working as Supervisor in a factory and getting salary of Rs.10,000/- per month, no evidence was led by the appellants in support of their said contention,

besides bald statement of AW1-Nanda Devi/claimant/appellant No.1/widow of the deceased. Even now, learned counsel for the appellants has been unable to show/prove the claimed avocation of the deceased. Accordingly, I find no error in the assessment of notional income of the deceased as made by the learned Tribunal as Rs.7,000/- per month.

7. As deceased was 52 years of age at the time of death, learned Tribunal correctly applied multiplier of 11 in conformity with the judgment of Hon’ble Supreme Court in case of **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104**; and granted 10% towards future prospects in conformity with the judgment of Hon’ble Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**. As the claimants were three in number, learned Tribunal correctly made deduction of 1/3rd towards personal expenses. Learned Tribunal assessed compensation in following manner:-

HEADS	AMOUNTS
Income	Rs.7,000/- per month
Future prospects (10%)	Rs.7,000/- + Rs.700/- = Rs.7,700/-
Deduction (1/3 rd)	Rs.5,133/-
Multiplier (11)	Rs.5,133/- x 12 x 11 = Rs.6,77,600/-
Loss of consortium to claimant/appellant No.1	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Total compensation	Rs.7,32,600/- rounded off to Rs.7,35,000/-

8. I find no merit in the contention of learned counsel for the appellants that each of the claimants are entitled to Rs.40,000/- towards loss of consortium in view of judgments of the Hon'ble Supreme Court in **Civil Appeal Nos.2410-2412/2023** titled as "**Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others**", **Mehmooda Bee & Others Vs. National Insurance Co. Ltd.** and **Civil Appeal No.6551 of 2022** titled as "**Bebi Giri Vs. National Insurance Co. Ltd.**", wherein it has been held that consolidated sum of Rs.40,000/- has to awarded in toto as consortium, and not consortium of Rs.40,000/- each, to each of the claimants. No judgment to the contrary has been cited by learned counsel for the appellants.

9. 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.

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.

02.05.2023
Sunena

(Nidhi Gupta)
Judge

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