IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 **FAO-7210-2018 (O&M)**

Date of decision: 30.05.2023

Sheela Rani & Others

...Appellant(s)

Vs.

Balwinder Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Sumeet Goel, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-26291-CII-2018

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 167 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.15,03,600/- granted by Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter referred to as "the learned Tribunal") vide Award dated 22.11.2017 passed in MACT Case No.4/04.03.2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Six claimants were the i) widow; ii) 10-month-old minor son; iii) mother; iv) 26-year-old sister; v) 24-year-old sister; and vi) 22-year-old brother of deceased-Lakhbir Singh who was 33 years of age at the time of accident. The four appellants before this Court are the mother, 27-year-old sister, 25-year-old sister and 23-year-old brother of deceased-Lakhbir Singh.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Lakhbir Singh had died in a motor vehicular accident that took place on 03.06.2016 due to rash and negligent driving of Mahindra Pick up Jeep bearing temporary registration No.PB-11-ZM-(T)-0284 now bearing permanent No.PB-11Y-7307 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2 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.

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

a) that income of the deceased has been assessed on lower side as only Rs.8,000/- per month as that of an unskilled labourer. It is submitted that the deceased was a driver of heavy motor vehicle and was earning Rs.21,000/- per month. It is submitted that even driving licence of the deceased was placed on record as Exhibit P5. However, learned Tribunal has ignored vital evidence in this regard and taken notional income of the deceased as that of an unskilled labourer. It is further submitted that income of the deceased ought to have been taken at least as that of a skilled labourer as Rs.8,887.52/- per month in consonance with Minimum Wage Notification dated 05.04.2017 issued by the Labour Commissioner, Punjab;

b) learned counsel for the appellants further relies upon judgment of Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram Vs. Mukesh Kumar Yadav Law Finder Doc ID # 1888548,** to submit that, as per the said pronouncement, in the absence of any evidence regarding income of the deceased, the same could not have been assessed at the lowest tier;

c) that learned Tribunal has taken age of the deceased as 33 years whereas the deceased was 25 years of age at the time of death as also depicted in his post-mortem report (Exhibit P4). It is submitted that accordingly, learned Tribunal has applied incorrect multiplier;

d) that interest has been granted at lower rate of 6% per annum whereas the same ought to have been at least 9% per annum;

e) that only Rs.15,000/- each has been granted towards loss of estate and funeral expenses whereas the same ought to have been higher.

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 learned Tribunal has granted compensation in following manner:-

Heads	**Amount**
Income	Rs.96,000/- per annum
Future prospects @ 40%	Rs.96,000/- + Rs.38,400/- = Rs.1,34,400/-
Deduction (1/3rd)	Rs.1,34,400/- - Rs.44,800/- = Rs.89,600/-
Multiplier (16)	Rs.89,600/- x 16 = Rs.14,33,600/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	**Rs.15,03,600/-**

7. Perusal of the record of the case reveals that in the claim petition age of the deceased is mentioned as 27 years and in the post-mortem report (Exhibit P4) age of the deceased is mentioned as 25 years. However, in the driving licence of the deceased (Exhibit P5), date of birth of the deceased is mentioned as 17.05.1983. Date of accident being 03.06.2016, the deceased was therefore, 33 years old at the time of death. In my view, of all the above evidence/pleadings in respect of age of the deceased, driving license is the best and most reliable evidence in this regard. Post-mortem report is always an approximation of age. Whereas, in the pleadings, there is scope for human error. Accordingly, I find no error in age of the deceased as taken by the learned Tribunal.

8. As regards income of the deceased, no doubt it was the pleaded case of the appellants before the learned Tribunal that the deceased was earning Rs.25,000/- per month by driving heavy vehicle, and the claimants had also placed on record driving licence of the deceased as Exhibit P5. However, no other evidence whatsoever was led by the claimants/appellants in support of their claim. Admittedly,

employer of the deceased was not examined; no salary slips or any other documentary proof in the form of bank statements or employer's record and register was produced by the appellants to show the alleged employment of the deceased. In this situation, in view of the absolute lack of evidence, there was no alternative for the learned Tribunal, but to assess the income of the deceased on the basis of the relevant Minimum Wage Notification.

9. Moreover, it has been argued on behalf of the appellants that in view of judgment of the Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram (supra),** income of the deceased could not have been taken at the lowest tier. However, perusal of the said Notification reveals that as of 01.03.2016, income of an unskilled labourer is depicted therein as Rs.7,210.52/-; semi-skilled as Rs.7,990.52/-; and a skilled labourer as Rs.8,887.52/-. Clearly, therefore, income of the deceased has not been taken at the lowest tier but has been taken as that of a semi-skilled labourer as Rs.7,990.52/- per month, rounded off to Rs.8000/- per month. Accordingly, I find no error in the assessment of notional income as Rs.8000/– made by the learned Tribunal on basis of the relevant Minimum Wage Notification. Moreover, in view of absolute lack of evidence regarding alleged income of the deceased, his income could not have been taken as that of a skilled labourer as Rs.8,887.52/-.

10. As regards argument of learned counsel for the appellants regarding interest, perusal of impugned Award reveals that

learned Tribunal has granted interest @ 6% per annum from the date of filing the petition till realisation; and in case Insurance Company fails to pay compensation amount within two months of the Award, it shall be liable to pay interest @ 9% per annum. Grant of interest is discretionary power with the learned Tribunal. I find it to be just and fair in the facts and circumstances. Moreover, Hon'ble Supreme Court, in case of **"Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India" Civil Appeal No.5193 of 1997 decided on 14.02.2003,** has held that award of interest is at the discretion of the Tribunal and the High Court.

11. 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.

12. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

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

30.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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