

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO 5260/2022 (O&M)

Date of decision: 15.02.2023

Smt. Bina Devi and others

.....Appellants

Vs.

Sushil Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. SK Yadav, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of Rs.5,92,720/- granted by the Motor Accident Claims Tribunal, Narnaul, (hereinafter referred to as 'the Tribunal') vide Award dated 1.4.2022 passed in MACP No.184/2019 filed u/s 166 of the Motor Vehicles Act,1988.

Brief facts of the case are that the learned Tribunal on appraisal of pleadings and evidence before it concluded that deceased Krishan Kumar died due to injuries suffered by him in a motor vehicular accident that took place on 12.4.2019 due to rash and negligent driving of truck bearing registration No. HR-66-A-9536 (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 respondents were held jointly and severally liable to pay the compensation. Claimants/ Appellants herein are widow and two major sons of the deceased.

Learned counsel for the appellants submits that the compensation awarded to the appellants is liable to be enhanced inter alia, on account of the fact that nothing has been awarded by the Tribunal by way of future prospects. It is submitted that even the amounts awarded under the various conventional heads is on the lower side. It is further submitted that notional income of the deceased ought to have been taken as per DC rate prevailing in District Mohindergarh at the relevant time in the year 2018 and not as per minimum wages notification.

No other argument has been raised on behalf of the appellants.

A perusal of the impugned Award shows that as the appellants were unable to produce any cogent evidence to support their claim regarding alleged income of the deceased accordingly, learned Tribunal took the notional income of the deceased as Rs.8800/- per month as per prevailing minimum wages admissible to unskilled worker in the year 2018. The ld. Tribunal took the age of the deceased as 56 years on the basis of Ex. P-13, driving licence of the deceased. Addition of 10% was made towards future prospects, and monthly income of the deceased was assessed as Rs.9680/-. A deduction of 50% was made towards personal expenses, as ld. Tribunal held that major sons of the deceased cannot be taken as dependents of the deceased. In doing so, ld. Tribunal relied upon para 15 of the judgment of Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104**. Thus, the annual dependency was calculated as Rs.58,080/-. As the age of the deceased was above 56 years, multiplier of 9 was applied, and compensation amount was assessed at Rs.5,22,720/-. Learned Tribunal further awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Accordingly, total compensation of

Rs.5,92,720/- was awarded along with interest @ 7.5% per annum from the date of filing of the petition till realization.

A perusal of the above computation of compensation as made by the Id. Tribunal shows, that contrary to the assertion of Id. Counsel for the appellants, and in conformity with the law laid down in **Sarla Verma's** case (supra), future prospects have been awarded @ 10%. Even under conventional heads, total amount of Rs.70,000/- has been awarded under the sub-heads of consortium, loss of estate and funeral expenses.

In my view 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. 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.

For the reasons stated above, I find no merit in this appeal and the same is hereby, dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

15.02.2023
Joshi