IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 282 /2023
Date of decision: 12.04.2023

Sonia and others

……..Appellants

Vs.

Dinesh Prashar and another

………..Respondents

CORAM: **<u>HON'BLE MS. JUSTICE NIDHI GUPTA</u>**

Present:- Mr. Aditya Bhushan, Advocate
for the appellants.

<u>Nidhi Gupta, J.</u>

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.19,54,200/- granted by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') vide Award dated 26.07.2022 passed in claim petition bearing MACP No.186/2020 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants/ appellants herein are the widow and three minor children of the deceased Bijender.

2. Brief facts of the case are that the ld. Tribunal on the basis of pleadings and evidence led before it concluded that the deceased Bijender had died due to injuries suffered by him in a motor vehicular accident that took place on 13.02.2020 due to rash and negligent driving of Car bearing registration No. HR-69C-4298 (hereinafter referred to as the 'offending

vehicle') being driven and owned by respondent no.1 herein and insured by respondent no.2 herein.

Ld. Tribunal awarded compensation as above alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization. Respondents herein were held jointly and severally liable to pay the compensation

3. Ld. Counsel for the claimants/appellants seeks enhancement of compensation only on the ground that the income of the deceased has been assessed on the lower side as only Rs.9319/- per month on the basis of Minimum Wage admissible to an unskilled labourer. It is submitted that the deceased was working as an Electrician and was earning Rs.30,000/- per month. It is submitted that the appellants/claimants had led exhaustive evidence on record to prove the said income of the deceased, which had not been rebutted by the respondents. It is submitted that accordingly, the compensation be enhanced to Rs.50 lacs by taking income of the deceased as Rs.30,000/- per month.

4. No other argument has been raised by the learned counsel for the appellants.

5. Heard ld. Counsel.

6. As regards income of the deceased, the ld. Tribunal records the following findings:

> *"Claimant No. 1- wife and claimants No. 2 to 4- minor children of deceased have sought compensation of Rs.50.00 lakhs. Claimant No. 1 has appeared as PW-2 and has asserted that her husband was 36 years old. He was an electrician and used to earn Rs.30,000/- per month. All the*

claimants were dependent upon deceased and he used to contribute his entire earning towards the family. However, to prove the asserted occupation and income of Rs.30,000/- of the deceased, no evidence except the oral assertions has been led by claimants. PW-2 during her cross-examination stated that he has no proof of the income and occupation of her husband. No documentary evidence i.e. bank account statement, income tax return or any diploma to show that deceased had expertise to work as an electrician has been led in evidence. Therefore, the self-serving testimony of PW-2 to the effect that deceased was earning Rs.30,000/- per month cannot be taken as gospel truth. Petitioners have therefore, failed to prove the nature of vocation and income therefrom of deceased. In the absence of any evidence to prove the pleaded occupation and income of the deceased, he has to be considered as an unskilled labour."

7. Learned counsel for the appellants has been unable to controvert the above said findings of the learned Tribunal, or even now show this Court any evidence to prove either the alleged occupation or the income of the deceased as claimed.

8. Accordingly, I find no ground to interfere in the assessment of notional income as made by the learned Tribunal as Rs.9319/- per month on the basis of Minimum Wage Notification dated 30.09.2020, applicable w.e.f. 01.01.2020, issued by the Labour Commissioner, Haryana.

9. Further, the learned Tribunal has computed the compensation payable to the appellants in the following manner:-

10. Age of the deceased was taken to be between 38 years on the basis of Ex.P-2 Post Mortem Report of the deceased. Accordingly, ld. Tribunal has made an addition of 40% towards future prospects in accordance with the judgment of the Hon'ble Supreme Court in *'**National Insurance***

Company Vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009',thus, taking the annual income of the deceased to be Rs.1,56,552/-. (Rs.9319+Rs.3727=Rs.13046x12). As the claimants are four in number, a deduction of 1/4th was rightly been made towards personal expenses. Thus, making annual income of the deceased to be Rs.1,17,414/-. As deceased was 38 years of age, the ld. Tribunal has correctly applied the multiplier of 15, calculating total dependency to be Rs.17,61,210/-. Learned Tribunal has further awarded conventional heads. Compensation in tabulated form is as under:-

Sr. No.	**HEAD**	**CALCULATION**	**AMOUNT**
1.	Income of the deceased	Rs.9319/- per month i.e. prevailing minimum wages	Rs.1,11,828/- per annum (Rs.9319x12 months)
2.	Addition towards Future prospects	40%	Rs.13046/- per month (Rs.9319+Rs.3727) i.e. Rs.1,56,552/- per annum.
3.	Deduction on account of personal expenses	1/4th as deceased was survived by 4 dependents/ claimants	Rs.39,138/-
4.	Loss of total dependency	Rs.1,56,552/- -Rs.39,138/-	Rs.1,17,414/-
5.	Multiplier	15x1,17,414	Rs. 17,61,210/-
6.	Funeral expenses		Rs.16,500/-
7.	Loss of Estate		Rs.16,500/-
8.	Loss of consortium to claimant No.1		Rs.40,000/-
9.	Parental consortium	Rs.40,000x3	Rs.1,20,000/-

10.	Total compensation		Rs.19,54,210/- rounded to Rs.19,54,200/-

11. I find no error whatsoever, in the compensation as calculated above by the ld. Tribunal. 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 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. 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 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.

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

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

(Nidhi Gupta)
Judge

12.04.2023
ps-I

Whether speaking/reasoned Yes/No

Whether reportable Yes/No