

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-306-2023 (O&M)
Date of decision: 30.05.2023

Darshana & Others
...Appellant(s)
Vs.
Balwan Singh & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pallavi Babbar, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-1156-CII-2023

This is an application under Section 5 of Limitation Act, 1963 read with Section 151, Code of Civil Procedure seeking condonation of delay of 148 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.12,59,776/- granted by Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as "the learned Tribunal") vide Award dated 01.02.2021 passed in MACT Case No.RBT-33 of 2019 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Three claimants/appellants are the widow, now 25-year-old son, and 23-year-old daughter of deceased-Jaipal who was 43 years of age at the time of death.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Jaipal had died in a motor vehicular accident that took place on 17.11.2018 due to rash and negligent driving of truck bearing registration No.HR-46D-7688 (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 @ 7% per annum from the date of accident i.e. 17.11.2018 except for the (lockdown) period from 23.03.2020 to 31.01.2021, till the date of actual realisation.

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

a) that the deceased was doing agriculture work and dairy farming and was earning Rs.20,000/- per month. However, learned Tribunal has taken income of the deceased as only Rs.8,498/-per month which is on lower side;

b) that nothing has been granted towards funeral expenses whereas appellants had incurred expenses of Rs.1 lakh on funeral ceremonies, etc.;

c) that nothing has even been granted towards loss of estate or consortium;

d) that interest only @ 7% has been granted whereas the same should be 12%.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. Perusal of impugned Award shows that age of the deceased was determined to be 43 years at the time of death on the basis of PMR Ex.C2. Though it was the pleaded case of the appellants before the learned Tribunal that the deceased was an agriculturist by occupation and he used to do dairy farming, etc. However, they failed to lead any evidence whatsoever in support of their claim or to prove the income of the deceased. Accordingly, learned Tribunal assessed notional income of the deceased on the basis of prevailing instructions as per which monthly income of unskilled labourer was taken as Rs.8,497.56/- rounded off to Rs.8,498/-. I find no error in the same. Even now, learned counsel for the appellants has been unable to produce any evidence whatsoever to show income of the deceased as Rs.20,000/- per month. Even otherwise as per established legal position, income from agriculture and/or dairy farming is not to be included while computing compensation payable under the Act as, said income is still available to the claimants even upon death of the deceased. As such, there is no "loss of income" in this respect.

7. As the claimants were three in number, learned Tribunal correctly made a deduction of $\frac{1}{3}^{\text{rd}}$ towards personal expenses. (Rs.8,498/- - Rs.2,832/- = Rs.5,666/-). Learned Tribunal further made an addition of 25% towards future prospects (Rs.5,666/- + Rs.1,416/- =

Rs.7,082/-). As deceased was admittedly 43 years old at the time of death, multiplier of 14 was correctly applied by the learned Tribunal. Thus, taking total dependency to be Rs.7,082/- x 12 x 14 = Rs.11,89,776/-. Perusal of Para 25 of the impugned Award reveals that in accordance with judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**, learned Tribunal has awarded total sum of Rs.70,000/- under conventional heads/miscellaneous expenses. As such, contention of learned counsel for the appellants that nothing has been granted by way of consortium is factually incorrect. It is further submitted on behalf of the appellants that learned Tribunal has granted no interest for the period 23.03.2020 to 31.01.2021. I find the said argument to be utterly fallacious as learned Tribunal has granted interest @ 7% per annum from the date of filing of claim petition “..except for the (lock-down) period from 23.03.2020 to 31.01.2021, till the date of actual realisation of the total amount..” Moreover, as per judgment of Hon'ble Supreme Court titled **Abati Bezbaruah Vs. Dy. Director General, Geolocial Survey of India Law Finder Doc ID # 117404**, it has been held that:

“...Award of interest is solely on the discretion of the Tribunal or the High Court.”

8. 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.

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

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

30.05.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No