

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

FAO 13/2020 (O&M)

Date of decision: 20.02.2023

Sunita and another

.....Appellants.

Vs.

Rohtash and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Karan Singh, Advocate for
Mr. Bhisham Kumar Majoka, Advocate for the appellants.

Nidhi Gupta, J.

This appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,61,464/- granted by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide Award dated 6.8.2019 passed in MACP 388/2018 in a petition u/s 166 and 140 of the Motor Vehicles Act,1988.

Brief facts of the case are that the Ld. Tribunal on the basis of pleadings and evidence before it concluded that the deceased Vishal had died due to injury suffered by him in a motor vehicular accident that took place on 25.10.2018 due to rash and negligent driving of Tractor bearing registration No. HR-30-G-9452 (hereinafter referred to as the 'offending vehicle'), being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein, who have been jointly and severally held liable to pay the compensation. However, recovery rights were granted to respondent no.3-Insurance Company against respondents 1 and 2. Learned Tribunal granted compensation as above

along with interest @ 7/5% per annum. Claimants are parents of the deceased-Vishal.

It is submitted by the Ld. Counsel that the appellants are entitled for enhancement of compensation inter alia, on the ground that income of the deceased has been taken as only Rs.8541/-, which is on the lower side. It is submitted that the deceased was working in a private company and earning Rs.20,000/- per month and the evidence led by the claimants in support has not been rebutted by the respondents. It is further submitted that the amount of Rs.15,000/- granted by the Tribunal towards funeral expenses is on lower side as cremation of a Hindu male cannot be performed for less than Rs.50,000/-. It is submitted that the deceased was sole bread winner of the family and claimants were wholly dependent on him. It is also stated that deduction of 50% towards personal expenses ought to have been 33%, and rate of interest also ought to have been 18%.

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

Perusal of the impugned Award shows that the age of the deceased, as per his Post Mortem Report Ex. P9 was 20 years. Though it was averred that the deceased was earning Rs.20,000/- per month, however, no evidence whatsoever, was produced by the claimants in support of the said contention. Accordingly, the Ld. Tribunal has taken the income of the deceased as per the relevant minimum wages notification for the year 2018 as Rs.8541/- per month as payable to an unskilled labourer. Undisputedly, deceased was unmarried and 20 years of age at time of death. Therefore, deduction of 50% towards personal expenses, as also applying multiplier of 18, is correct. Further, in view of judgment of Hon'ble Supreme Court in **National Insurance**

Company Limited v Pranay Sethi and others (2017) 16 SCC 680, 40% was granted towards future prospects. Under the conventional heads, learned Tribunal has granted a sum of Rs.15,000/- towards loss of estate; Rs.40,000/- towards loss of filial consortium; and Rs.15,000/- towards funeral expenses.

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. Death of a near and dear one cannot be turned into a market negotiation where every penny has to be calculated and drawn. 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.

In view of the above, finding no merit in this appeal the same is hereby dismissed.

(Nidhi Gupta)
Judge

20.02.2023
Joshi

Whether speaking/reasoned
Whether reportable

Yes
Yes/No