

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO No.730-2019 (O&M)
Date of decision: 31.01.2023**

Rakesh Kumar (Since Deceased) through LRs ...Appellant(s)

Vs.

Jatinder Pal & Another ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Jyoti Chahal, Advocate for
Mr. R.S. Budhwar, Advocate for the appellants.

NIDHI GUPTA, J.

Present appeal has been filed seeking enhancement of compensation of Rs.4,26,100/- awarded by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the learned Tribunal") vide Award dated 01.11.2018 passed in MACP Case No.620 of 2017.

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that appellant-Rakesh Kumar had suffered injuries in a motor vehicular accident that took place on 08.12.2017 due to rash and negligent driving of Swift car bearing registration No.HR-31F-8784 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver and owner of the offending vehicle, and insured by respondent No.2 herein. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

It is stated that during pendency of present appeal, original appellant/claimant Rakesh Kumar son of Rajpal has expired, and now his widow, two children and parents are appellants before this Court.

The only ground on which learned counsel for the appellants seeks enhancement of compensation is that income of the claimant has been taken on lower side. It is submitted that claimant was working as a labourer and earning Rs.15,000/- per month. However, learned Tribunal has taken his income as only Rs.8,280/- per month.

It is further submitted that amounts granted under all other heads are on lower side in view of the fact that the claimant had suffered grievous injuries.

It is also submitted that the claimant had suffered permanent disability to the extent of 38% and therefore, compensation be enhanced.

No other argument is made on behalf of the claimant.

A perusal of record of the case shows that the learned Tribunal has awarded compensation to the claimant in following manner:-

“46. In view of above mentioned facts and circumstances, the calculation of compensation on account of permanent disability/earning capacity is as follows:-

- | | | |
|--|---|-------------|
| 1. Annual income (8,280x12) | = | Rs.99,360/- |
| 2. Loss of future earning per Annum (21% of annual income) | = | Rs.20,866/- |
| 3. Multiplier applicable with Reference to age | = | 16 |

4. Loss of future earnings = Rs.3,33,856/-
(Rs.20,866x16)

Rounded as = Rs.3,34,000/-

47. In this way, petitioner is held entitled to a total sum, which is as under:-

1. Treatment expenses	Rs.72,100-00
2. For pain and suffering	Rs.15,000-00
3. For special diet	Rs.5,000-00
4. For suffering disability/ Earning capacity	Rs.3,34,000-00
 Total	 Rs.4,26,100-00"

A perusal of record further shows that Medical Board of doctors constituted to examine case of the claimant had found that the claimant had suffered physical disability to the extent of 38% of which 32% was permanent disability and 6% was temporary disability. This fact is evident from Exhibit P1 which is disability certificate and the same has been proved by PW2 Dr. Anup Mehta, Medical Officer, LNJP Hospital, Kurukshetra who had deposed regarding the above facts. During cross examination, PW2 had even deposed that the disability will reduce by 30% if it is considered qua whole body and even temporary disability may improve.

As regards arguments of learned counsel pertaining to income of the claimant, a perusal of impugned Award shows that in Para 44 thereof, learned Tribunal has noticed the claim of the claimant that he was a labourer and earning Rs.15,000/- per month. However, as no document with regard to income of the claimant was produced, notional income of the claimant was taken as Rs.8,280/- per month on the basis of Minimum Wage notification applicable in the State of Haryana at the

relevant time in the year 2017. In view of the above uncontroverted facts and evidence on record, I find no ground is made out to interfere in the impugned Award. I find the Award 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. 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.

Dismissed.

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

31.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No