

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO 2046/2020 (O&M)****Date of decision: 25.05.2023.****Smt. Bhanmati****.....Appellant****Vs.****Nitesh Kumar Khemka and others****.....Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. SK Sharma, Advocate for the appellant.****Nidhi Gupta, J.****CM 6055-CII/2020**

Since there is delay of 40 days in refiling the appeal, aforesaid application has been filed seeking condonation of the said delay.

2 For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

3. **CM 6056-CII/2020**

4. Since there is delay of 87 days in filing the appeal, aforesaid application has been filed seeking condonation of the said delay.

5. For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal

6. Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.5,11,000/- granted by the Motor Accident

Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide Award dated 9.5.2019 passed in MACT case No.50/2018 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Sole appellant before this Court is widow of the deceased, and claimants No. 2 to 4 are proforma respondents No. 3 to 5 herein, being major sons of the deceased Ram Chander.

7. Ld. Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 23.3.2018 due to rash and negligent driving of Verna CRDi SX(O) 1.6 bearing registration No. DL-10CD-7642 (hereinafter referred to as 'the offending vehicle') being driven and owned by respondent no.1 and insured by respondent no.2. The Tribunal awarded compensation as above along with interest @ 6% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

8. Ld. Counsel for the appellants assails the impugned Award on the ground that deduction of 50% made by the Ld. Tribunal on account of contributory negligence on the part of the deceased is unfounded and contrary to the evidence on record and therefore, deserves to be reversed. It is submitted that accident had taken place solely due to rash and negligent driving of respondent no.1, and Ld. Tribunal has ignored vital evidence in this regard in the form of testimony of PW2 Raj Mohan who was author of the FIR as also eyewitness of the accident in question. It is submitted that as per statement of PW2 deceased was not at fault in the accident and therefore, Ld. Tribunal is in patent error in deciding issue no.1 partly in favour of the appellant and partly in favour of respondent no.1.

9. It is further submitted that nothing has been granted by way of parental consortium to claimants 2 to 4. In support Id. Counsel relies upon judgment of the Delhi High Court in **Kanti Devi and others v New India Assurance Co. Ltd.**, MAC.App 361/2013 decided on 23.9.2022.

10. No other argument has been raised by learned counsel for the appellant.

11. Heard.

12. Findings of the Id. Tribunal in respect of contributory negligence on the part of the deceased are contained in paras 15 to 18 of the impugned Award which are reproduced hereunder:-

"15 A perusal of the FIR (Ex.P1) would show that it was by Raj Mohan (PW2) which read that on 23.3.2018, deceased Ram Chander was on his way back from village Kabulpur to his home after completing his personal work. His son Raj Mohan (PW2) and Nitin were following him on a separate motor-cycle. When they reached near Takshila School, at outer Sunaria Bye-pass, Rohtak, Respondent No.1 came on Verna Car bearing registration No.DL-10CD/7642 from the side of Jalebi Chowk, driving the car in a rash and negligent manner and struck against the Scooty of the deceased. As a result of this, Ram Chander suffered fatal injuries. He was shifted to PGIMS, Rohtak where he succumbed to the injuries on the same day. Accordingly, Raj Mohan (PW2) lodged FIR No. 149 dated 23.3.2018, under Sections 279, 304-A IPC with Police Station Shivaji Colony, Rohtak.

16. I have also perused the site-plan (Ex.R2) of the place of accident, prepared by the police in the Criminal case. A look at the same would show that the accident took place near the divider. The deceased was coming from the outer Sunaria Road and took a right turn from the divider towards dhaba from which side Respondent No.1 was coming in the Car

bearing No DL-10CD/7642 It appears that when the deceased took a turn, he dashed his Scooty in the Car in question.

17. Considering the testimony of Raj Mohan (PW2) as well as the site plan (Ex.R2), I am of the considered view that the deceased was also at fault for the abovesaid accident because he was supposed to ensure that before he took a turn from the divider, no vehicle was approaching and thus, there was contributory negligence on his part for causing the abovesaid accident.

18. In view of the above, I am of the considered view that the accident, resulting into the death of Ram Chander on account of injuries on the part of the deceased as well as Respondent no.1. Accordingly, this issue is partly decided in favour of the claimants and partly decided against him".

13. Ld. Counsel or the appellant is unable to controvert the above said findings or show anything as to why the said reasoning is incorrect. Accordingly, I find no ground to interfere in the impugned Award in so far as 50% deduction towards contributory negligence is concerned.

14. As regards argument of Id. Counsel in respect of parental consortium, the issue is no longer res integra. It has been held by the Hon'ble Supreme Court in Hon'ble Supreme Court in '**New India Assurance Company Ltd. Vs. Vinish Jain and others, Law Finder Doc ID#977386**', and followed by this Court in **Harpal Kaur and others v Sita Ram and others, Law Finder Doc Id # 921104; Narender Nayyar v Sheodan Singh and others, Law Finder Doc Id # 626136; and Sajna Devi and others v Vijender Kumar and others, Law Finder Doc Id # 921100**, that major sons/ children are not entitled to consortium. Ld. Counsel for the appellants has not shown any judgment to the contrary.

15. Even otherwise, Hon'ble Supreme Court in latest judgment rendered in case of **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023**; and reiterated by the Hon'ble Supreme Court in **Mehmooda Bee & others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022**; and **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018**, it has been held that only a sum of Rs.40,000/- can be granted, 'in toto' towards loss of consortium. Accordingly, learned Counsel for the appellant cannot derive any help from the relied upon judgment.

16. 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 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 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 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.

17. Dismissed.
18. Pending application, if any, stands disposed of.

25.05.2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No