

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-2061-2020 (O&M)
Date of decision: 28.02.2023

Anita & Others

...Appellant(s)

Vs.

Jai Bhagwan & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok K. Sharma, Advocate for the appellants.

NIDHI GUPTA, J.

CM-6071-CII-2020

This is an application under Section 151 CPC for condonation of delay of 39 days in re-filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-6073-CII-2020

This is an application under Section 151 CPC seeking exemption from filing true typed/certified copy of judgment and memo of cost.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-6074-CII-2020

This is an application under Section 5 of the Limitation Act for condonation of delay of 29 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.16,07,462/- awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as “the learned Tribunal”) vide Award dated 11.07.2019 passed in Claim Petition No.164 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). Claimants are wife and three children of deceased-Ishwar.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Ishwar had died due to injuries suffered by him in a motor vehicular accident that took place on 03.08.2017 due to rash and negligent driving of *tralla* bearing registration No.HR-56A-6919 (hereinafter referred to as “the offending vehicle”) being driven and owned by respondent No.1 and insured by respondent No.2. 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.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia, on the ground;

a) that future prospects have been granted at the rate of 25% whereas the same should be 40%;

b) that only Rs.48,622/- has been granted towards medical expenses whereas the expenses incurred by the appellants for treatment of deceased was much more.

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

5. I have heard learned counsel for the appellants.

6. a) Perusal of impugned Award shows that learned Tribunal has taken age of the deceased as 40 years on the basis of PMR (Exhibit P11);

b) Though it was stated by the appellants that the deceased was running a tea stall and earning Rs.18,000/- per month, however, as no evidence in support of their contention was placed on record, learned Tribunal had taken notional income of the deceased as Rs.8,200/- per month on basis of relevant Minimum Wage notification in respect of unskilled labourer issued by the Government of Haryana;

c) In my view, addition of 25% towards future prospects is in accordance with the judgment of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104;**

d) As there are four claimants, deduction of 1/4th towards personal expenses is also correct;

e) Application of multiplier of 15 is also correct;

f) Rs.40,000/- each has been granted towards consortium to the appellants;

g) Rs.15,000/- has been granted towards funeral expenses.

7. Accordingly, I find the above said compensation as granted by learned Tribunal to be in accordance with law laid down by the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680.**

8. 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. 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.

9. Accordingly, I find no merit in the present appeal and the same is hereby **dismissed**.

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

28.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No