IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

267 **FAO-316-2023 (O&M)**
Date of decision: 30.05.2023

Ram Kishan & Another
...Appellant(s)
Vs.
Naveen Kumar & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Chaudhary, Advocate for
Mr. Bhavdeep Singh Mamli, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-1164-CII-2023

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 50 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.15,20,800/- granted by Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as "the learned Tribunal") vide Award dated 13.07.2022 passed in MACP-617-2021 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are parents of deceased-Birender who was aged 27 years 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-Birender had died in a motor vehicular accident that took place on 18.08.2021 due to rash and negligent driving of tempo bearing registration No.HR-55AJ-0147 (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 @ 7.5% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

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

a) that learned Tribunal is in error in making a deduction of 50% towards personal expenses whereas keeping in view the fact that the claimants are two in number, deduction of 1/3rd ought to have been made;

b) that income of the deceased has been taken on lower side as only Rs.9,803/- per month whereas in actual fact, the deceased was a mason by profession and was earning Rs.25,000/- per month;

c) that learned Tribunal has made an addition of 40% as future prospects whereas the same should be 50%;

d) that learned Tribunal has applied multiplier of 17 whereas the same ought to have been 18.

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

5. I have heard learned counsel for the appellants.

6. Perusal ofimpugned Award reveals that age of the deceased was determined to be 27 years at the time of death on the basis of his Aadhaar Card (Exhibit R1) wherein date of birth of the deceased has been recorded as 01.01.1993. Though it was the pleaded case of the appellants that the deceased was a mason and was earning Rs.25,000/- per month. However, besides the bald statement of PW1/father of the deceased/appellant No.1 herein, there was no other evidence whatsoever produced by the appellants in support of their said contention. Accordingly, learned Tribunal had correctly assessed notional income of the deceased as Rs.9,803/- per month as that of an unskilled labourer on the basis of relevant Minimum Wage Notification dated 01.09.2021 issued by the Labour Commissioner, Haryana. Learned Tribunal thus, calculated annual income of the deceased as Rs.9,803/- x 12 = Rs.1,17,636/-.

7. As deceased was 27 years of age at the time of death, learned Tribunal correctly made an addition of 40% towards future prospects in conformity with judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680.** Thus, annual income of the deceased came to be Rs.1,17,636/- + Rs.47,054/- = Rs.1,64,690/-. Admittedly, the deceased was a bachelor at the time of death. Moreover, PW1/father of the deceased/claimant No.1, has admitted in his cross-examination that he was earning Rs.800-900 per day. Accordingly, learned Tribunal correctly

held him to be not dependent on income of the deceased; and therefore, correctly made a deduction of 50% on income of the deceased towards personal expenses. Thus, annual income of the deceased was calculated to Rs.82,345/-. Learned Tribunal further applied multiplier of 17 in accordance with law laid down by Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** taking total dependency of the deceased to be Rs.82,345/- x 17 = Rs.13,99,865/-. Under conventional heads, learned Tribunal granted Rs.16,500/- towards funeral expenses, Rs.16,500/- towards loss of estate, Rs.88,000/- i.e. Rs.44,000/- each towards loss of consortium.

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 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No