IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

272 **FAO-651-2020 (O&M)**
Date of decision: 17.05.2023

Bimla & Others
...Appellant(s)
Vs.
Dhirender & Another
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ram Bilas Gupta, Advocate
for the appellants.

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NIDHI GUPTA, J.

CM-812-CII-2020

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 232 days in filing the appeal.

No ground is made out to condone such inordinate delay of 232 days in filing the appeal.

Dismissed.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.11,59,800/- granted by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as "the learned Tribunal") vide Award dated 09.01.2019 passed in Claim Petition No.49 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The four claimants are the major sisters and brothers aged 32 years, 39 years, 34 years and 60 years respectively of deceased-Ranbir, who was 45 years old at 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 the deceased-Ranbir had died due to injuries suffered by him in a motor vehicular accident that took place on 29.10.2016 due to rash and negligent driving of canter bearing registration No.HR-38R-0927 (hereinafter referred to as 'the offending vehicle'), being driven and owned by respondent No.1 and insured by respondent No.2 herein. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the claim petition till realisation.

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

a) that learned Tribunal has made a deduction of 1/3rd towards personal expenses whereas keeping in view the fact that the claimants are four in number, deduction of 1/4th ought to have been made;

b) that learned Tribunal has taken income of the deceased on lower side as only Rs.8,070/- per month. It is submitted that the deceased was running a milk dairy and was earning Rs.35,000/- per month;

c) that learned Tribunal has granted nothing by way of consortium to the appellants.

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

5. I have heard learned counsel for the appellants.

6. Perusal of record of the case shows that though it was the pleaded case of the appellants that the deceased was running a milk dairy and was earning Rs.35,000/- per month, however, no evidence to prove said income of the deceased was produced by the claimants. Even otherwise, PW1/claimant-appellant No.3/brother of the deceased has admitted in cross-examination that the claimants are still running the milk dairy and had not sold the buffalos. Claimants No.3 and 4/brothers of the deceased have both admitted that they are also cultivating the land of the deceased. Even otherwise, it is established legal position that while computing compensation under the Act, income from agriculture and dairy farming is not to be included. Moreover, nothing has been produced by the appellants in the form of bank statement of the deceased to show that he was earning Rs.35,000/- per month and depositing the same in the bank. Accordingly, I find no error in the assessment of notional income as made by the learned Tribunal as Rs.8,070/- per month on the basis of relevant Minimum Wage notification dated 21.10.2016 issued by the Labour Commissioner.

7. Age of the deceased was held to be 45 years at the time of death on the basis of his post-mortem report (Exhibit P1). Accordingly, learned Tribunal correctly applied multiplier of 14; and correctly made an addition of 25% towards future prospects. Even otherwise, admittedly, claimants No.1 and 2 aged 32 and 39 years respectively, are the married sisters of the deceased who are well settled in their matrimonial homes; and claimants No.3 and 4 are the brothers

of the deceased who are aged 34 and 60 years respectively. Even though learned Tribunal has held that their dependence upon the deceased is proven on record yet, in fact, there is not even a smidgen of evidence on record which showed that the claimants had pecuniary dependence on the deceased. Thus, there is no reason to interfere with the deduction of 1/3rd made by the learned Tribunal towards personal expenses. Learned Tribunal has further awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

8. Compensation granted by the learned Tribunal is as follows in tabular form:

Heads	**Amounts**
Income	Rs.8,070/- per month
Future prospects (25%)	Rs.8,070/- + Rs.2,017/- = Rs.10,087/-
Deduction (1/3rd)	Rs.10,087/- - Rs.3,362/- = Rs.6,725/-
Annual income	Rs.6,725/- x 12 = Rs.80,700/-
Multiplier (14)	Rs.80,700/- x 14 = Rs.11,29,800/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	**Rs.11,59,800/-**

9. Accordingly, 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, 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.

10. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

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

17.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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