

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
253
FAO-16086-2018 (O&M)
Date of decision: 17.05.2023

Jasmeena Bano & Others

...Appellant(s)

Vs.

Arun Kumar Gautam & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Tulika Bose, Advocate for
Mr. Gourav Verma, Advocate
for the appellants.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.22,12,000/- granted by Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as "the learned Tribunal") vide Award dated 06.09.2018 passed in MACP No.480 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The four claimants are the widow, two minor children and mother of deceased-Shabbir Ahmad.

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-Shabbir Ahmad had died due to injuries suffered by him in a motor vehicular accident that took place on 19.08.2017 due to rash and negligent driving of vehicle bearing registration No.HR-74-1341 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3 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 prior to the accident in question, the deceased was working as a Conductor and was earning Rs.16,000/- per month. However, learned Tribunal has taken income of the deceased on lower side as only Rs.10,000/- per month. It is submitted that the appellants had produced cogent evidence on record to prove income of the deceased, and by way of documentary evidence, had even placed on record salary statement (Exhibit P2 to Exhibit P7) of the deceased. Yet, learned Tribunal has taken income of the deceased at very lower side;

b) that amounts granted under all other heads are also on lower side and deserve to be enhanced.

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 findings of the learned Tribunal in respect of income of the deceased are contained in para 15 of the impugned Award which is reproduced hereinbelow:-

“15. In this claim petition, petitioners have claimed the income of deceased Shabbir Ahmad as Rs.16,000/- per month as conductor. To prove the income of deceased claimants have examined PW3 Abdul Lajif who deposed that deceased Shabbir Ahmad was working on his vehicle as conductor and was taking salary of Rs.16,000/- per month.

He placed on record Ex.P2 to Ex.P7 salary statement of deceased Shabbir Ahmad (conductor) wherein salary of deceased Shabbir Ahmad is mentioned Rs.10,000/- per month. Rs.6000/- have been given in addition to the salary, for 4 trips @ Rs.1500/- each. Therefore, it cannot be said to be a fixed component of salary. Therefore, it would be appropriate to assess income of deceased at Rs.10,000/- per month as mentioned in Ex.P2 salary slips of deceased. Even a labourer can earn 8000-9000/- per month.”

7. Learned counsel for the appellants is unable to deny that gross salary of the deceased was Rs.10,000/- per month, and the variable sum of Rs.1,500/- was not a fixed component of the salary. Accordingly, in my opinion, the learned Tribunal has correctly assessed the income of the deceased as Rs.10,000/- per month.

8. As per post-mortem report, age of the deceased was determined to be 30 years at the time of accident. As deceased was not a Government employee or on permanent job, learned Tribunal correctly made an addition of 40% towards future prospects. As claimants are 4 in number, learned Tribunal correctly made deduction of 1/4th towards personal expenses; and correctly applied multiplier of 17. Thus, calculating total compensation to be Rs.21,42,000/-. In accordance with law laid down by Hon’ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**, learned Tribunal further awarded Rs.70,000/- under conventional heads. Thus, totalling to Rs.22,12,000/-.

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

Heads	Amounts
Income	Rs.10,000/- per month
Future prospects (40%)	Rs.10,000/- + Rs.4,000/- = Rs.14,000/-
Annual income	Rs.14,000/- x 12 = Rs.1,68,000/-
Deduction (1/4 th)	Rs.1,68,000/- - Rs.42,000/- = Rs.1,26,000/-
Multiplier (17)	Rs.1,26,000/- x 17 = Rs.21,42,000/-
Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.22,12,000/-

10. 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, 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.

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

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

17.05.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No