IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

254 **FAO-16303-2018 (O&M)**

Date of decision: 17.05.2023

Bala Devi & Others

...Appellant(s)

Vs.

Mahender Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tushar Sabherwal, Advocate for
Mr. Anil Ghanghas, Advocate
for the appellants.

Mr. Abhinav Singla, Advocate for
Mr. Amit Goyal, Advocate
for respondent No.3/Insurance Company.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.14,70,000/- granted by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as "the learned Tribunal") vide Award dated 09.08.2018 passed in Claim Petition No.88 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants are the widow, minor son and parents of deceased-Bijender Singh @ Bijender.

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-Bijender Singh @ Bijender had died due to injuries suffered by him in a motor vehicular accident that took place on 19.05.2017 at 11:40 am due to rash and negligent driving of Alto 800 LXI car bearing registration No.HR-16P-5277 (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 @ 6% per annum from the date of filing the claim petition till realisation.

3. Learned counsel for the appellant seeks enhancement of compensation on the grounds:

a) that learned Tribunal has taken age of the deceased as 44 years on the basis of his Aadhaar card (Exhibit P14). It is submitted that in actual fact, age of the deceased was 40 years at the time of death as evident from his School Leaving Certificate (Exhibit P11) wherein his date of birth is mentioned as 07.01.1977. It is submitted that accordingly, learned Tribunal ought to have added future prospects @ 40% and not @ 25% as incorrectly done. It is submitted that therefore, multiplier too, should have been 16 and not 14 as incorrectly applied by the Tribunal;

b) that learned Tribunal has assessed income of the deceased as only Rs.10,000/- per month. It is submitted that the deceased was doing agricultural work as also dairy farming and was earning more than Rs.25,000/- per month from both the said pursuits. It is submitted that in support of their contention, the appellants had placed on record copy of jamabandi (Exhibit PA) for the year 2016-17 showing that the deceased owned half share in 48 kanals of land. It is submitted that accordingly, income of the deceased should have been assessed as at least Rs.20,000/- per month. It is further stated that the deceased was having loan amount of Rs.3,00,000/- which was also being repaid by him in instalments and therefore, it is clear that income of the deceased was more than Rs.10,000/- per month;

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

4. In response, it is submitted by learned counsel for respondent No.3/Insurance Company:

a) that it is the claimants' own case as pleaded in the claim petition that the deceased was 44 years of age at the time of death, therefore, future prospects have been correctly added @ 25%, and multiplier of 14 has also been correctly applied;

b) that while computing compensation under the Act, income from agriculture and dairy farming is not to be included;

c) that as per the relevant Minimum Wage Notification, income of the deceased ought to have been taken as Rs.7,600/- per month as admissible to an unskilled labourer. However, learned Tribunal has taken it on higher side as Rs.10,000/- per month.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows that indeed, it is the own pleaded case of the claimants that the deceased was 44 years old at the time of accident. Even as per Aadhaar card (Exhibit P14), date

of birth of the deceased is mentioned as 01.01.1973. Even in MLR (Exhibit P1), and copy of post-mortem report (Exhibit P2), age of the deceased is mentioned as 45 years. In view of these overwhelming evidence led by the claimants themselves, in my view, learned Tribunal made no error in taking age of the deceased as 44 years at the time of death.

8. As regards income of the deceased, it was vehemently submitted on behalf of the claimants that the deceased was deriving income of Rs.25,000/– per month from agricultural land and dairy farming. Though jamabandi (Exhibit PA) was produced by the claimants to show that the deceased was owner of the 24 kanals of land, however, no proof/record regarding income of the deceased was produced by the claimants. In any event, it is established position in law that income from agricultural land and dairy farming is not included while computing compensation payable under the Act as, the land as well as the milch cattle are still with the claimants even after the death of the deceased. As such, there is no loss of income therefrom. In the present case too, it is the appellants' own case that the agricultural land is still with them, as are the milch cattle. Therefore, it cannot be held that there is any loss of income in that respect.

9. However, in the peculiar facts of the present case, keeping in view the fact that father of the deceased is old and can therefore, not till the land, and son of the deceased was minor at the time of filing of claim petition and is stated to be studying and would

therefore, not be able to manage the land, accordingly, a sum of Rs.12,000/- per month is awarded towards managerial expenses. In this regard, reliance may be placed upon judgment of this Court in **Gurdeep Singh Vs. Tarsem Singh 2008 (2) RCR (Civil) 774** wherein it has been held that in a case such as the present one where the deceased was cultivating about 7 acres of land, services rendered by him in managing and cultivating the land should be estimated in terms of money as Rs.3,000/- per month. However, in the said case, the accident had taken place as far back as in 1988 whereas in the present case accident is of 2017. Therefore, in my view, it would be fair and just to assess notional income of the deceased as Rs.12,000/- per month.

10. As age of the deceased was between 44 to 45 years at the time of death, learned Tribunal correctly made an addition of 25% towards future prospects. Though, learned Tribunal held that claimant No.4/father of the deceased/pro-forma respondent No.4 herein, was not dependent on the deceased and therefore, held him not entitled for any compensation. However, keeping in view the fact that father of the deceased is aged, in my view, a deduction of $1/4^{th}$ should be made towards personal expenses.

11. Learned Tribunal has further correctly, granted Rs.70,000/- under conventional heads i.e. Rs.40,000/- towards loss of consortium to claimant No.1/widow of the deceased; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, totalling to compensation of Rs.14,70,000/-.

12. In view of the above discussion, Compensation admissible to the claimants is re-worked as follows:-

Heads	**MACT**	**In Appeal**
Income	Rs.10,000/-	Rs.12,000/- per month
Future prospects	25%	(25%) Rs.12,000/- + Rs.3000 = Rs.15000/-
Deduction	$1/3^{rd}$	($1/4^{th}$) Rs.15000/- - Rs.3750= Rs.11,250/-
Multiplier	14	(14) Rs.11,250/- x 12 x 14 = Rs.18,90,000/-
Conventional heads	Rs.70,000/-	Rs.70,000/-
Total	**Rs.14,70,000/-**	**Rs.19,60,000/-**

13. Interest @ 6% per annum as granted by the learned Tribunal is maintained. Ratio of apportionment and manner of disbursement of compensation as determined by the learned Tribunal is maintained. Present appeal, accordingly, stands **partly allowed** in above terms.

14. 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