

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 16295/2018

Date of decision:01/03/2023

Dharmender and another

.....Appellants

Vs.

Rajesh @ Khannu and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Chander Pal Tiwana, Advocate for the appellants.

Nidhi Gupta, J.**CM 28941-CII/2018**

Since there is delay of 49 days in refiling the appeal, aforesaid application u/s 151 CPC has been filed seeking condonation of said delay.

For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.30,26,800/- granted vide Award dated

18.11.2017 passed by Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') in MACP No.159/2017 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the Id. Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased Sushil had died due to injuries received by him in a motor vehicular accident that took place on 26.2.2017 due to rash and negligent driving of Car bearing registration No. HR-08-P-0460 (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. Claimants before the Tribunal were the husband of the deceased-Sushil, her minor son, and mother-in-law. Appellants before this Court are husband and minor son of the deceased.

Ld. Tribunal awarded compensation as above along with interest @ 9% per annum from the date of filing of the claim petition till realization. Ld. Tribunal held that compensation amount shall be apportioned in equal share between the appellants. Respondent no.3 being insurer of the offending vehicle was held liable to pay the compensation amount.

The only ground on which enhancement of compensation is sought by the Id. Counsel for the appellants is that nothing has been granted to claimant no.3-mother-in-law of the deceased. It is submitted that the mother-in-law was dependent upon the deceased and therefore, ought to have been taken as dependent and compensation awarded to her. It is further stated that interest has been awarded @ 9% per annum and the same ought to be enhanced to 18% per annum. It is also submitted that nothing has been

granted by way of consortium to claimant/appellant no.2 being minor child of the deceased.

No other argument has been raised on behalf of the appellants.

Heard ld. Counsel for the appellants.

Perusal of the impugned Award shows that Tribunal while awarding the compensation has taken the age of the deceased as 32 years on the basis of her Post Mortem Report Ex.P4. Although the deceased was not educated, however, in view of the judgment of the Hon'ble Supreme Court in **Arun Kumar Aggarwal and another v National Insurance Company and others, 2010(3) PLR(SC)418**, as the deceased was a Homemaker, she was taken to be skilled person and accordingly, her notional income was taken as Rs.11,000/- per month. Income of the deceased was thus, assessed as Rs.1.32 lacs per annum. As deceased was 32 years of age as per Ex.P4, future prospects @ 40% were added in accordance with the law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. Accordingly, annual income came to be Rs.1,32,000 + Rs.52,800/- = Rs.1,84,800/- per annum. Multiplier of 16 was applied, and total dependency was calculated as Rs.29,56,800/-. However, no deduction whatsoever was made by the ld. Tribunal towards personal expenses. Further Rs.15,000/- was awarded for loss of estate, Rs.40,000/- for loss of consortium, and Rs.15,000/- towards funeral expenses.

Though it has been vehemently argued by the learned counsel for the appellants that claimant no.3 has not been considered to be dependent upon the deceased, in my view, the said argument is not

acceptable as, undoubtedly, claimant no. 3 would be dependent upon her son/ claimant no.1. It is not the appellants' case that claimant/appellant no.1 who is son of claimant no.3/mother-in-law of the deceased is not working. He is only 36 years of age and not stated to be unemployed. Moreover, claimant no. 3 is not an appellant before this Court and has only been arrayed as proforma respondent herein. Accordingly, I find no error in the reasoning of the Id. Tribunal that claimant no.3 is not entitled to compensation as there was no evidence of her being dependent on the deceased.

As regards argument of the Id. Counsel for the appellants that nothing has been awarded by way of consortium to appellant no.2-minor son of the deceased, the same is liable to be rejected as, as noticed above, no deduction has been made from the notional income of the deceased towards personal expenses. Claimants being 3 in number, a deduction of $\frac{1}{4}^{\text{th}}$ was liable to be made towards personal expenses, which comes to $\frac{1}{4}^{\text{th}} \times \text{Rs. } 1,84,800 = \text{Rs. } 46,200/-$; whereas, Rs. 40,000/- would have been granted as consortium.

Thus, in my view the learned Tribunal has awarded just and fair compensation in the facts and circumstances of the case and no case for interference is made out. 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. 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.

Dismissed.

01/03/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No