

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-278-2020 (O&M)

Date of decision: 08.05.2023

Sandeep Kumar

...Appellant(s)

Vs.

Kulwant Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Navjot Singh, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-657-CII-2020

This is an application under Section 151 CPC seeking
condonation of delay of 487 days in re-filing the appeal.

After going through the contents of the application, the
same is allowed subject to all just exceptions.

CM-658-CII-2020

This is an application under Section 5 of the Limitation
Act seeking condonation of delay of 780 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 claimant seeking
enhancement of compensation of Rs.10,34,000/- granted by Motor
Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the

learned Tribunal”) vide Award dated 07.12.2015 passed in MACP No.24 of 2014 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). Claimant is the son of deceased-Janko Devi.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Janko Devi had died due to injuries suffered by her in a motor vehicular accident that took place on 06.02.2014 due to rash and negligent driving of truck bearing registration No.HP-12E-9249 (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 @ 9% per annum from the date of filing the claim petition till realisation to claimant and pro-forma respondents No.4 to 7 in the petition.

3. Learned counsel for the appellant seeks enhancement of compensation on the sole ground that income of the deceased has been taken on lower side as only Rs.5,000/- per month. It is submitted that deceased was a housewife and doing work of knitting and stitching from which vocation she was earning Rs.15,000/- per month and therefore, learned Tribunal has erred in taking income of the deceased as only Rs.5,000/- per month.

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

5. I have heard learned counsel for the appellant.

6. Perusal of record of the case shows that age of the deceased has been determined to be about 55 years at the time of accident. Though it was the pleaded case of the appellant that deceased was earning Rs.15,000/- per month by doing work of knitting, etc., however, the appellant placed nothing on record to substantiate his claim. Accordingly, learned Tribunal by placing reliance upon judgment of Hon’ble Supreme Court in case of **Lata Wadhwa Vs. State of Bihar 2001 ACJ 1735**, took notional income of the deceased as Rs.5,000/- per month. As deceased was between 50-60 years of age, learned Tribunal correctly made an addition of 15% towards future prospects, and applied multiplier of 11. Learned Tribunal further granted Rs.50,000/- to each of the five children of the deceased, towards loss of love & affection, and Rs.25,000/- towards funeral expenses.

7. Compensation granted by learned Tribunal to the claimant is as follows in tabular form:-

Heads	Amounts
Total annual value of services rendered by deceased @ Rs.5,000/- x 12	Rs.60,000/-
15% addition towards future prospects	Rs.60,000/- + Rs.9,000/- = Rs.69,000/-
Multiplier (11)	Rs.69,000/- x 11 = Rs.7,59,000/-
Loss of love & affection (for five children @ Rs.50,000/- each)	Rs.2,50,000/-
Funeral expenses	Rs.25,000/-
Total	Rs.10,34,000/-

8. In my view, learned Tribunal has in fact, awarded compensation far in excess of what is permissible under law. As per latest judgment of Hon’ble Supreme Court in **Shri Ram General**

Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023, reiterated by the Hon'ble Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022**, a total amount of Rs.77,000 can be granted under the conventional heads. Whereas, in the present case, learned Tribunal has awarded Rs.2,75,000/-. However, as, as per law, compensation cannot be decreased in claimant's appeal, I find no case is made out that merits enhancement of the impugned Award. I find the compensation awarded to the appellant to be more than just and fair in the facts and circumstances of the case.

9. 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.

08.05.2023
Sunena

(Nidhi Gupta)
Judge

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