IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226 **FAO-16093-2018 (O&M)**
Date of decision: 30.05.2023

Ravi @ Ravi Kumar & Others
...Appellant(s)

Vs.

Major Singh & Another
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Jagram Singh Cooner, Advocate
for the appellants.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.6,83,400/- granted by Motor Accident Claims Tribunal, Moga (hereinafter referred to as "the learned Tribunal") vide Award dated 27.08.2018 passed in MACP/81/2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Five appellants are the 37-year-old son, 32-year-old son, 27-year-old son (at the time of filing appeal), widow and mother of deceased-Lachhu Ram @ Lashu Ram who was 55 years of age at the 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 deceased-Lachhu Ram @ Lashu Ram had died in a motor vehicular accident that took place on 11.09.2016 due to rash and negligent driving of truck bearing registration No.PB-08-BU-9211 (hereinafter referred to as 'the offending vehicle') being driven and owned by respondent No.1 and insured by respondent No.2. Learned Tribunal awarded compensation as above along with interest @ 9% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

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

a) that learned Tribunal has made a deduction of 50% whereas in view of the fact that there are five claimants, a deduction of 1/4th ought to have been made;

b) that learned Tribunal has awarded nothing by way of loss of consortium, whereas all the five claimants were entitled to Rs.44,000/- each by way of consortium.

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 age of the deceased was determined to be 55 years at the time of death, as mentioned in the claim petition, as also on the basis of his post-mortem report (Exhibit P1).

7. Though, it was the pleaded case of the appellants that the deceased was a cobbler (mochi) by profession and was earning Rs.15,000/- per month. However, as no evidence in support of alleged income of the deceased was produced by the appellants, learned Tribunal took notional income of the deceased as Rs.9,000/- per month; Rs.1,08,000/- per annum (Rs.9,000/- x 12). Learned Tribunal further applied multiplier of 11 in accordance with law laid down by Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104** (Rs.1,08,000/- x 11 = Rs.11,88,000/-). Learned Tribunal made an addition of 10% towards future prospects in accordance with **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680** (Rs.11,88,000/- + Rs.1,18,800/- = Rs.13,06,800/-).

8. Claimants No.1 to 3, being major sons of the deceased, were held to be not dependent upon the deceased. Moreover, nothing whatsoever was placed on record by the said claimants to prove their pecuniary dependence upon the income of the deceased. Hon'ble Supreme Court in **"New India Assurance Co. Ltd. Vs. Vinish Jain &**

Others" Law Finder Doc ID # 977386 and this Court in **(P&H) Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136;** and **Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,** has held that major children of the deceased are not entitled to compensation. No judgment to the contrary has been cited by learned counsel for the appellants. Thus, learned Tribunal correctly made a deduction of 50% i.e. Rs.6,53,400/- towards personal expenses.

9. Under conventional heads, learned Tribunal awarded Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. No doubt learned Tribunal could have granted Rs.40,000/- more towards loss of consortium. However, it has been held by Hon'ble Supreme Court in **Vinish Jain (supra)** that where the difference in compensation is only about 4%-5%, it does not warrant interference by this Court. This judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in **The Managing Director, Divisional Controller Versus Alikutty and Others, Law Finder Doc Id # 1885188**. Relevant para 18 of the said judgment is reproduced below:-

> "18. It is to be borne in mind, the accident occurred on 23,2,2019. It is more than 2 ½ years since the respondents 1 to 4 have been knocking at the doors of the Courts seeking compensation on account of the death of the bread winner. It is trite law that the Tribunal is permitted to do some guess work and also exercise its discretion to fix the reasonable and just compensation, for which there cannot be any straight jacket formula based on mathematical precision. In ***New India Assurance Company v. Vinish Jain and others [(2018) 3 SCC 619]***, the Hon'ble Supreme Court has held that if the fixation of compensation is within permissible limits, the courts should normally not interfere with such awards".

10. Above said view has been reiterated by the Kerala High Court in **Reliance General Insurance Company Limited vs. Adila and Others, Law Finder Doc ID # 1921609**, paras 16 and 17 of which read as under:-

> “16. The other area of dispute is that the Tribunal after awarding compensation under the conventional heads has awarded Rs.75,000/- towards loss of love and affection and Rs.10,000/- awarded towards pain and sufferings.
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> 17. In ***New India Assurance Co., Ltd v. Vineesh.J [2018 (3) SCC 619]***, the Hon'ble Supreme Court has held that the Appellate Court can permit variation of plus or minus 4 to 5 percent”.

11. In my view, the above facts amply demonstrate that no case is made out that merits interference with the impugned Award. 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 opinion, in the present case, the learned Tribunal has taken a very fair, just and rational view, 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.

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

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

30.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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