

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO 183/2019(O&M)

Date of decision: 01.06.2023.

Smt. Maya and others

.....Appellants

Vs.

Sunil Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

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

Nidhi Gupta, J.

CM 647-CII/2019

Since there is delay of 113 days in refiling the appeal, instant application has been filed seeking condonation of said delay.

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

CM 650-CII/2019

3. Since there is delay of 59 days in filing the appeal, instant application has been filed seeking condonation of said delay.

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

Main Appeal

5. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.6.98 lacs granted by the Motor Accident

Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide Award dated 7.12.2017 passed in MACP No.102/2016 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants/appellants are 3 daughters aged 33, 28,26 years, and one son aged 45 years (at the time of filing appeal) of deceased-Rohtash Kumar, who was 62 years old at the time of death.

6. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 10.9.2016 due to rash and negligent driving of Camper bearing registration No.HR-16M-4407 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

7. Ld. counsel for the appellants seeks enhancement of compensation on the sole ground that nothing has been granted by way of loss of estate, and that as per judgment of the Hon'ble Supreme Court in Pranay Sethi, the appellants are entitled to Rs.15,000/- by way of loss of estate.

8. No other argument has been raised.

9. Heard ld. counsel.

10. I find no merit whatsoever in the argument raised by the ld. counsel for the appellants and the same is liable to be rejected as, the Hon'ble Supreme Court in '**New India Assurance Company Ltd. Vs. Vinish Jain and others**, Law Finder Doc ID#977386' and followed by this Court in

Harpal Kaur and others v Sita Ram and others, Law Finder Doc Id # 921104; Narender Nayyar v Sheodan Singh and others, Law Finder Doc Id # 626136; and Sajna Devi and others v Vijender Kumar and others, Law Finder Doc Id # 921100, have held that major children of the deceased are not entitled to compensation. In the present case, though this argument was raised by the ld. counsel for the respondent Insurance Company before the ld. Tribunal, however, the same has been rejected by the Tribunal in contravention of the above said law laid down by the Hon'ble Supreme Court. Nonetheless, it is an admitted fact that the appellants are all married and well settled in their matrimonial homes. It is also admitted that the appellants had no pecuniary dependence upon the income of the deceased. Accordingly, as per established legal position, the appellants could not have been held to be dependent upon the deceased, and were, therefore, not entitled to compensation. In such a situation, needless to say, there is no question of enhancement of compensation so awarded by the ld. Tribunal on a misapprehension of the correct legal position in this regard.

11. Even otherwise, ld. Counsel for the appellants has only sought addition of Rs.15,000/- by way of loss of estate. Hon'ble Supreme Court in **Vinish Jain** (supra) has held that where the difference in compensation is about 4% to 5%, no interference in the Award is called for.

12. This aforementioned judgment of the Hon'ble Supreme Court has been followed by the Kerala High Court in **The Managing Director, Divisional Controller Versus Alikutty and ors., 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”.

13. 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.

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”.

14. Accordingly, in my opinion, in view of the undisputed legal position as above, no case is made out that warrants interference in the impugned Award.

15. For the reasons stated above, finding no merit in this appeal the same is hereby dismissed.

16. Application(s), if any, stand disposed of.

01.06.2023.
Joshi

(Nidhi Gupta)
Judge