2023:PHHC:078176

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 520/2019 (O&M)

Date of decision: 25.05.2023.

Smt. Shamshida and others

……….Appellants

Vs.

Gulab Kumar Meena and others

……….Respondents

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Gupta, Advocate for the appellants

Mr. Paul S.Saini, Advocate and
Ms. Komal Jit Kaur, Advocate for the respondent no.3.

<u>Nidhi Gupta, J.</u>

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,26,200/- granted by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as ‘the Tribunal’) vide Award dated 29.8.2018 passed in MACP No. 352/2017 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as ‘the Act’). Claimants are widow, four major children and one minor son of the deceased Habibu Rahman.

2. Ld. Tribunal on 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 25.4.2017 due to rash and negligent driving of Truck bearing registration No. RJ-02-GB-0054 (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 @ 7.5% per annum from the date

of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

3. Ld. Counsel for the claimants seeks enhancement of compensation on the ground that the income of the deceased has been taken on the lower side as only Rs.8000/- per month. It is submitted that the deceased was teaching Urdu at the local Madrasa from where he was getting salary of Rs.30,000/- per month and was also running a milk dairy from where he was earning Rs.15,000/- per month. It is further submitted that the age of the deceased has been taken as 54 years whereas as per ration card issued by the Food and Supply Department, Haryana, age of the deceased is mentioned as 35 years as on 5.9.2012. It has further been submitted that the amounts granted under other heads are also on the lower side.

4. No other argument has been raised.

5. Heard ld. Counsel.

6. Perusal of the record of the case shows that it was pleaded case of the appellants before the Tribunal that the deceased was earning Rs.60,000/- per month i.e. Rs.15,000/- from his job in Chandra Laxmi Sheet Glasses, Rs.30,000/- as Urdu Teacher, and Rs.15,000/- from dairy farming. Appellants had further placed on record salary slip Ex.P25 to P28 of the deceased wherein salary of the deceased was mentioned as Rs.8000/- per month from his job in Chandra Laxmi Sheet Glasses. In support, Appellants examined PW6 Parry Tawar, Marketing Executive, Chandra Laxmi Sheet Glass who had deposed that the deceased was working with them. As regards alleged income of the deceased from teaching Urdu at local Madrasa, no documentary evidence was led by the appellants in support of the same. As regards assessment of income on the basis of purported income of Rs.15,000/-

of the deceased from dairy farming, according to settled proposition of law the same is not admissible as said income is available with the claimants even after the death of the deceased. Accordingly, I find no error in the income assessed by the ld. Tribunal as Rs.8000/- per month on the basis of evidence led by the appellants themselves.

7. Ld. Tribunal has noticed that in claim petition age of the deceased has been mentioned as 45 years; however, in the Aadhar Card, Ex.P14, year of birth of the deceased is mentioned as 1963. Accordingly, ld. Tribunal has correctly taken the age of the deceased to be 54 years at the time of his death. Moreover, Memo of Parties reveals that age of eldest son of the deceased/ claimant no.2 is mentioned as 25 years. If version of the appellants were to be believed, appellant would have had his first son at age of 10, which is highly improbable.

8. Thus, Ld. Tribunal has correctly made addition of 10% towards future prospects in accordance with the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680** and calculated annual income of the deceased as Rs.1,05,600 (Rs.8000+800x12). As claimants were six in number ld. Tribunal has correctly made a deduction of 1/4th towards personal expenses. In actual fact as claimants 2 to 4 are major children of the deceased, and only claimant no.1 (widow of the deceased) and claimant no.6 (minor son) of the deceased are dependents, ld. Tribunal ought to have made a deduction of 1/3rd towards personal expenses. Be that as it may, ld. Tribunal thus, calculated annual income of the deceased as Rs.79,200/- per annum. As deceased was 54 years of age, ld. Tribunal correctly applied multiplier of 11 (in accordance with the judgment of the Hon'ble Supreme Court in **Sarla Verma**), and calculated total dependency as

Rs.8,71,200/-. Ld. Tribunal has further granted Rs.55,000/- under the conventional heads. No doubt Rs.15,000/- more could have been granted under the loss of estate, however, as held by Hon'ble Supreme Court in **'New India Assurance Company Ltd. Vs. Vinish Jain and others, Law Finder Doc ID#977386'**, in case there is difference of only 4% to 5% in compensation, no interference is called for with the Award of the Tribunal. Ld. Counsel for the appellants has shown no judgment to the contrary.

9. Accordingly, in view of the discussion above, I find no case is made out that merits interference with the impugned Award. I find the compensation awarded to the appellants to be just and fair in the facts and circumstances of the case. 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, 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.

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

11. Pending application, if any, stands disposed of.

25.05.2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**