

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-1158-2019 (O&M)
Date of decision: 08.05.2023

Smt. Rajo & Others

...Appellant(s)

Vs.

Rashid Khan & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mandeep Singh Kundu, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-3408-CII-2019

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 214 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 claimants seeking enhancement of compensation of Rs.5,74,000/- granted by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as "the learned Tribunal") vide Award dated 29.01.2018 passed in MACT Case/CIS No.139 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The five claimants are the widow, and four major sons aged 40 years, 38 years, 35 years and 32 years, of the deceased-Ram Phal.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Ram Phal had died due to injuries suffered by him in a motor vehicular accident that took place on 06.02.2016 due to rash and negligent driving of trolly bearing registration No.RJ-02GA-6412 (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 @ 7% per annum from the date of 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 inter alia on the grounds:-

a) that at the time of accident, the deceased was about 60 years of age and therefore, learned Tribunal ought to have applied multiplier of 9 whereas, learned Tribunal has applied multiplier of 7;

b) that nothing has been granted by way of future prospects;

c) that learned Tribunal has made deduction of 1/3rd towards personal expenses whereas keeping in mind that claimants are five in number, deduction of 1/4th ought to have been made;

d) that only Rs.40,000/- has been granted towards loss of consortium whereas claimants being five in number, were entitled to Rs.40,000/- each towards loss of consortium.

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

5. I have heard learned counsel for the appellants.

6. Learned Tribunal on the basis of pleadings of the parties, framed following issues:-

“1. Whether the accident took place due to rash and negligent driving of vehicle registration No.RJ-02GA-6412 by its driver-respondent No.1 on 06.02.2016 within the jurisdiction of police station, Baroda (Sonepat), resulting injuries to claimant Smt. Kishni, death of Ramphal and death of he-buffalo and causing damage to bullock cart belonging to claimants Chand & others as alleged? OPP.

2. If issue No.1 is proved in the affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP.

3. Whether respondent No.1 was driving the vehicle bearing registration No.RJ-02GA-6412 in violation of terms and conditions of insurance policy? OPR.

4. Relief.”

7. Perusal of the above Issues, in particular Issue No.2, framed by learned Tribunal shows that onus to prove amount of compensation payable to the claimants, was upon the claimants. Accordingly, it was incumbent upon the claimants themselves to prove age of the deceased. Perusal of record of the case shows that appellant No.1 had appeared as PW1 before the learned Tribunal and testified that deceased was 55-56 years of age at the time of death. However, claimants did not produce any documentary proof regarding age of the deceased.

Whereas, as per post-mortem report of the deceased (Exhibit P3), age of

the deceased was shown therein to be *"about 60 years approximately"*.

Accordingly, learned Tribunal took age of the deceased to be 'about 60 years approximately' on the basis of the post-mortem report (Exhibit P3).

8. PW1 has further testified that the deceased was earning Rs.30,000/- per month from agriculture and dairy farming. However, as claimants did not produce any documentary proof regarding income of the deceased, accordingly, learned Tribunal took notional income of the deceased as Rs.8,000/- per month on the basis of relevant Minimum Wage Notification. Even otherwise, it is a settled proposition of law that income from agriculture and dairy farming is not to be considered/included while computing compensation payable under the Act. This is because the agricultural land and the milch cattle, and the income therefrom, are still with the claimants after death of the deceased. Accordingly, I find no error in the notional income of Rs.8000/- as assessed by the learned Tribunal.

9. Learned Tribunal granted nothing on account of future prospects as deceased was over 60 years of age. I find no error in the same. This is as per law laid down by the Hon'ble Supreme Court in **Pranay Sethi**. Accordingly, annual income of the deceased was calculated to be Rs.8,000/- x 12 = Rs.96,000/-. As regards deduction of 1/3rd income, admittedly claimants No.2 to 5 are major sons of the deceased. Their pecuniary dependency upon the deceased is not proven. Therefore, in actual fact, learned Tribunal ought to have deducted 50% towards personal expenses. However, learned Tribunal made deduction of

1/3rd and calculated total loss of income of the deceased as Rs.72,000/- per annum. As age of the deceased was held to be about 60 years, Learned Tribunal correctly applied multiplier of 7, taking total amount of income to Rs.5,04,000/-. Learned Tribunal further granted Rs.70,000/- under conventional heads. Thus, learned Tribunal calculated total compensation to be Rs.5,74,000/- in the above manner.

10. As regards contention of the learned counsel for the appellants that nothing has been granted by way of consortium to appellants No.2 to 5 being major children of the deceased, in my view said argument deserves to be outrightly rejected in view of the judgment of the Hon'ble Supreme Court in '**New India Assurance Company Ltd. Vs. Vinish Jain and others**, Law Finder Doc ID#977386', and of this Court in **Harpal Kaur and Others Vs. Sita Ram and others**, Law Finder Doc Id # **921104**; **Narender Nayyar v SheodanSingh and others**, Law Finder Doc Id # **626136**; and **Sajna Devi and others v Vijender Kumar and others**, Law Finder Doc Id # **921100**, wherein it has been held that major children of the deceased or not entitled to compensation. Learned counsel for the appellants has not cited any case law to the country.

11. It also needs to be pointed out that the compensation of Rs.5,74,000/- as calculated by the learned Tribunal is in actual fact, mathematically incorrect/excessive as, when compensation is calculated in the above manner, total compensation comes to Rs.5,18,000/-, whereas the learned Tribunal has incorrectly calculated the same to be

Rs.5,74,000/- which is excessive by Rs.56,000/- (Rs.5,74,000/- - Rs.5,18,000/- = Rs.56,000/-).

12. As per settled law, it is not open to this Court to decrease the compensation in an appeal filed by the claimants. Accordingly, in the facts and circumstances of the case, I find no error in the manner in which the learned Tribunal has computed the compensation in the present case. 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, 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.

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

14. 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