IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-3994-2019(O&M)
Date of decision: 05.05.2026

Bhateri & Others

...Appellant(s)

Vs.

Sandeep & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3.

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NIDHI GUPTA, J.

CM-13329-CII-2019

This is an application under Section 151 CPC for condonation of delay of 11 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit of Clerk of learned counsel for the appellants, the same is allowed subject to all just exceptions and delay of 11 days in re-filing the present appeal is condoned.

CM-13330-CII-2019

This is an application under Section 5 of Limitation Act for condonation of delay of 21 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit of the appellant No.1, the same is allowed subject to all just exceptions and delay of 21 days in filing the appeal is condoned.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.22,66,000/- awarded by the Motor Accident Claims Tribunal, Hisar (hereinafter 'the learned Tribunal') vide Award dated 13.11.2018 passed in MACP No.58 dated 31.05.2017 filed under Section 166 of Motor Vehicles Act (hereinafter "the Act"). The 3 claimants are the 23-year-old widow, 42-year-old mother and 50-year-old father of deceased Vikas, who was 22 years old at time of accident.

2. Brief facts of the case are that the ld. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Vikas had died due to the injuries suffered by him in a motor vehicular accident that took place on 03.03.2017 due to the rash and negligent driving of TATA LPT 2515 Dumper bearing registration No.HR-21-F-0482 (hereinafter "the offending vehicle") being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3. The compensation has been awarded with interest @ 9% per annum. Respondents were held jointly and severally liable to pay the compensation.

3. Present appeal is of the year 2019 and notice is yet to be issued in the main appeal as the matter has been adjourned either at request of or

due to none-appearance of learned counsel for the appellants. Even today, even in the second round, none has appeared on behalf of the appellants. Perusal of Grounds of Appeal shows that the appellants are seeking enhancement of compensation on the following grounds that: -

4. Income of the deceased has been taken on the lower side as only Rs.10,000/- per month. It is stated that the appellants had duly proved that deceased was earning Rs.15,600/- per month. It is further submitted that Rs.1 lakh each ought to have been awarded by way of consortium; Rs.25,000/- should have been awarded under the head of funeral expenses and loss of estate; Rs.22000/- should have been awarded towards Counsel fee. Interest should be 18% per annum. It is prayed that the present appeal be allowed; and the impugned Award be modified/enhanced.

5. Per contra, learned counsel for the respondent No.3 opposes the above assertions of the appellants and submits that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

6. I have heard learned counsel and perused the case file in detail. I find no merit in the grounds on which the appellants are seeking enhancement of compensation.

7. Record reveals that it was the pleaded case of the appellants that deceased Vikas was working as a Supervisor in Anand Enterprises from the period 20.08.2016 till 03.03.2017 at monthly salary of Rs.15,600/-. The claimants had examined PW3 Subhash Chander who had produced copy of

Salary and Attendance Register as Ex.PW3/1. However, the said evidence adduced by the appellants could not have been relied upon as during his cross-examination, PW3 has admitted that in the Income Tax Return for the Assessment Year 2015-16 (Ex.R1), name of the firm has been shown as DKP Traders and not M/s Anand Enterprises. PW3 further stated that name of the firm was changed in the year 2016 and further admitted that the said Income Tax Return and Balance Sheet produced before the Court were not signed by any Chartered Accountant or Income Tax Authority. Thus, the evidence produced by the appellant to prove employment and income of the deceased was not reliable.

8. On the other hand, the respondent No.3/Insurance Company had rebutted the aforesaid evidence of the claimants by examining RW1 Mr. Karamveer, Tax Assistant who had produced Income tax Return for the assessment years 2015-16, 2016-17 and 2017-18 (Ex.R8, Ex.R9 and Ex.RI0 respectively) and stated that documents Ex.R1 and Ex.R2 pertains to same tax-payer of Ex.R8 to Ex.R10. However, in all these documents, details of deceased Vikas have not been mentioned to the effect that he was working at the assessee firm and taking monthly salary of R.15,600/-. Therefore, the claimants, had failed to prove the income of deceased. Thus, as no reliable evidence was produced by the claimants, the learned Tribunal had assessed income of the deceased as Rs.10,000/- per month as a skilled person. Keeping in view the above discussion, I find no error in the same.

9. Further, age of the deceased was determined to be 22 years at the time of accident, on the basis of his Post-Mortem Report (Ex.P5). Accordingly, the learned Tribunal has made an addition of 40% towards future prospects; and correctly applied multiplier of 18. As there were 3 claimants, the learned Tribunal has correctly made deduction of 1/3rd. Under the conventional heads, the learned Tribunal has awarded Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate; and Rs.40,000/- to each of the claimants towards loss of consortium; thereby awarding total compensation of Rs.22,66,000/-.

10. From the above, it is clear that in the facts and circumstances of the case, a very just and fair compensation has been awarded to the appellants. Nothing whatsoever has been shown to this Court that would merit enhancement of the compensation granted to the appellants. 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. Hon'ble Supreme Court in '**State of Haryana & Another Vs. Jasbir Kaur & Others' Law Finder Doc ID # 64043** and **'Divisional Controller K.S.R.T.C. Vs. Mahadeva 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. In the case of **"General Manager, KSRTC Vs. Susamma Thomas & Others" 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.

11. It may be pointed out that in respect of the accident dated 03.03.2017, FIR No.40 dated 03.03.2017 was under registered under Sections 279 and 304-A IPC at Police Station Uchana against respondent No.1 on the basis of statement made by eyewitness Vedpal. The claimants had examined the said Vedpal before the learned Tribunal as PW2. The learned Tribunal has recorded in Para 13 of the Award that: -

> *"13… .. ..Further Bedpal, author of the FIR Ex. P3, while appearing into the witness box as PW2 has specifically deposed about the accident in question and stated that due to rash and negligent driving of offending vehicle by respondent no.1 accident had occurred, in which Vikas sustained multiple injuries and succumbed due to the injuries… .. …"*

12. On the basis of the evidence led by said eyewitness, the learned Tribunal had held that the accident in question had been caused due to the rash and negligent driving of the offending vehicle by respondent No.1; and had accordingly held the claimants entitled to compensation.

13. It may however be pointed out that in the said FIR, the respondent No.1 has been acquitted by the learned Sub-Divisional Judicial Magistrate, Narwana vide judgment dated 04.01.2022. Relevant findings returned by learned Magistrate are as follows:-

"9. After going through the arguments and documents put-forth by both of the parties, it comes to the considered opinion of this court that prosecution has failed to bring home the guilt of the accused Sandeep beyond reasonable doubt, because here the case was registered at the instance of application of complaint/tehrir/statement of Vedpal which is Ex.PW1/A in which specific allegations have been raised against the vehicle of accused bearing registration no.HR21F-0482 <u>but when Vedpal stepped into witness box as PW-1 then he denied the authenticity of his statement recorded by stating that he did not give such statement to the police but in fact police took his signatures on blank papers. In fact Vedpal as PW-1 specifically denied that some unknown vehicle hit the motorcycle of his uncle Vikash, due to which he and Pardeep fell on the road and sustained injuries and thereafter they expired</u>… … …"

(Emphasis added)

14. A bare reading of the above facts shows that the claimant side has turned turtle on its previous statement. No doubt, proceedings under the Act have to be decided on the preponderance of probabilities. However, this Court cannot shut its eyes in an ostrich like manner to the starkly diametrically opposite stance taken by the claimants' side in the criminal trial. Thus, no credence can be attributed to the contrary statements made by the claimants' side before the learned Tribunal. It would therefore appear that the claimants' side had deposed falsely before the Tribunal only to get the compensation. In such a situation, reference may be made to a judgment

of this Court in **"United India Insurance Company Limited Vs. Kamla Devi & Others" (P&H) : Law Finder Doc Id # 251230** wherein it has been held that:

> *"5. It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal court is not binding on the Tribunal; the non-filing of a FIR is not material; even the fact of involvement of the vehicle as found by the criminal court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come a finding that the particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal court or looked for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal court, necessitating the statement made before the criminal court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice.""*

15. The above said view has been reiterated by this Court in **"Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others" FAO-2231-2014 decided on 03.12.2019,** wherein it is held as under:-

> *"(6) This Court cannot loose sight of the judgment rendered by this Court in the case of* ***United India Insurance Company Limited versus Kamla Devi and others,*** *wherein it was specifically held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury."*

16. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings. In view of the above discussion, no ground is made out for enhancement of compensation.

17. The present appeal accordingly stands **dismissed.**

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

05.05.2026 **(Nidhi Gupta)**
Sunena **Judge**

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