

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****254****FAO-5911-2019 (O&M)****Date of decision: 15.01.2025****Smt. Meena Rani & Others****...Appellant(s)****Vs.****Rajinder Kumar & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Nonish Kumar, Advocate
for the appellants.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.17,27,566/- granted by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the learned Tribunal") vide Award dated 01.03.2019 passed in MACP No.138 of 2017 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The 6 claimants are the parents and 1 married and 3 unmarried sisters of the deceased-Suraj @ Monu who was 20-21 years at the time of accident.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Suraj @ Monu had died due to the injuries suffered by him in a motor vehicular accident that took place on 01.08.2017 due to the rash and negligent driving of motorcycle bearing registration No.HR-91-3410 (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 the compensation as above along with interest @ 9% per annum from the date of filing the petition till realisation.

3. Learned counsel for the appellants seeks enhancement of compensation on the ground that prior to his death, the deceased was working as a skilled labourer and was earning Rs.20,000/- per month. However, income of the deceased has been assessed as only Rs.8,222/- per month as unskilled labourer which is on the lower side. It is further submitted that only meagre amount of Rs.40,000/- has been awarded to the parents of the deceased under the head of filial consortium whereas Rs.40,000/- each ought to have been awarded to all the 6 claimants towards consortium i.e. Rs.2,40,000/-. Even nothing has been awarded on account of pain and suffering or loss of love and affection. Even father of the deceased is neither running any business nor earning handsomely. Therefore, the deduction of income should have been $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$. It is accordingly prayed that the impugned compensation be enhanced.

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

5. I have heard learned counsel for the appellants and perused the case file in great detail.

6. On the basis of testimony of PW2/eyewitness to the accident, it was concluded that the deceased had died due to the injuries suffered by him in the motor vehicular accident that took place on



01.08.2017 due to the rash and negligent driving of the offending vehicle by respondent no.1. It has been argued on behalf of the appellants that the learned Tribunal has wrongly assessed the income of the deceased as only Rs.8,222/- per month; whereas the deceased was a skilled labourer and earning Rs.20,000/- per month. However, the learned Tribunal has found that except for the bald statement of father of the deceased/claimant/appellant No.2/PW1, there is no evidence on record to prove that the deceased was skilled labourer. As such the learned Tribunal had taken the deceased to be an unskilled labourer and on the basis of notification of Minimum Wages prevailing in the State of Haryana at the relevant time/01.08.2017, income of the deceased was determined as that of an unskilled labourer as Rs.8,222/- per month. Age of the deceased was determined to be 20-21 years as per Post-Mortem Report (Ex.P3). Accordingly, multiplier of 18 has been correctly applied. The learned Tribunal further granted future prospects at the rate of 40% which is in conformity with the judgment of the Hon'ble Supreme Court in **"Sarla Verma & Others Vs. Delhi Transport Corporation & Another"** Law Finder Doc ID # 188882. Further, the contention of the learned counsel for the appellants that deduction of 1/4th ought to have been made considering the fact that there were 6 claimants, is liable to be rejected as admittedly, the deceased was a bachelor at the time of accident. As such, deduction of 50% ought to have been made. However, the learned Tribunal has made a deduction of 1/3rd of the income of the deceased



towards his personal and living expenses keeping in mind the fact that the deceased had 3 unmarried sisters. Strictly speaking, the 3 unmarried sisters would be dependent upon their father/claimant No.2. However, on grounds of equity and fair play, a deduction of $1/3^{\text{rd}}$ was made. Learned Tribunal further awarded Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of filial consortium.

7. I find the said compensation to be just and fair in the facts and circumstances of the present case. The Hon'ble Supreme Court in **(SC) SLP No.13931 of 2017** titled as **"New India Assurance Co. Ltd. Vs. Vinish Jain & Others"**, has held that where difference in compensation is about 4 to 5 per cent only, it does not warrant interference by this Court as, such variation in compensation is within permissible limits.

8. This above-said 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 straitjacket formula based on mathematical



*precision. In **New India Assurance Company Vs. 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”.*

9. 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.”*

10. No case law to the contrary has been cited by learned counsel for the appellants.

11. 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**' Law Finder Doc ID # **64043** 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.

12. In view of the above, the present appeal is **dismissed**.
13. Pending application(s) if any also stand(s) disposed of.

15.01.2025
Sunena

(Nidhi Gupta)
Judge

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