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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 22nd August, 2013*

+ **MAC.APP. 353/2012**

SMT HARKISHAN KAUR & ORS. Appellant

Through: Mr. Vinay Sabharwal and Ms. Neha
Sabharwal, Advocates.

Versus

MANOJ AHUJA & ANR. Respondents

Through: Respondent No. 1 in person.
Ms. Shantha Devi Raman, Advocate
for Respondent No. 2/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM No. 5950/2012 (for delay)

1. Vide the instant application, the applicants/appellants are seeking condonation of delay of 381 days in filing the instant appeal.
2. Present application is filed by the applicant/appellant No. 2, widow of the deceased Gurminder Singh who died at the age of 41 years in the accident took place on 18.08.2006. The impugned award was passed on 20.11.2010. Thereafter, though the applicant pursued the matter with the advocate concerned, however, the instant appeal is filed belatedly.

3. Learned counsel appearing on behalf of the applicants/appellants submits that the delay is neither intentional nor deliberate but due to the reasons and circumstances beyond the control of the applicant. Moreover, she has been mentally disturbed due to the death of her husband. He prays to condone the delay in the interest of justice.

4. Learned counsel appearing on behalf of the respondent No.2/Insurance Company opposes this application. However, she fairly concedes that if this Court is inclined to allow the instant application, then the respondent No.2/Insurance Company may not be made liable to pay the interest for the inordinate delay of 381 days.

5. In view of the averments made in the application and the submissions made by the learned counsel for the applicants/appellants and in the interest of justice, I allow the present application.

6. Consequently, delay of 381 days in filing the appeal noted above is condoned.

7. I here make it clear that if the instant appeal is allowed, then the appellants will not be entitled for interest for the delayed period, i.e., 381 days.

8. In view of the above, the instant application is disposed of.

MAC.APP. 353/2012

1. By way of the present appeal, the appellants are seeking enhancement of the award amount.

2. Vide impugned award dated 20.11.2010, the learned Tribunal has granted a total compensation of Rs.5,43,760/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition, i.e., 17.01.2007 till its realization in favour of the appellants.

3. Briefly stated, on 18.08.2006 deceased Gurminder Singh sustained fatal injuries in a road accident when he was going on his Motor Cycle bearing registration No.DL-3S(AH) 2719. When he reached at Bhad Rakua, Lakkarpur, P.S. NIT, District Faridabad, offending vehicle, i.e., a Maruti Van bearing registration No.HR-29-K-1336, driven by respondent No.1 at a very high speed in a rash and negligent manner, hit the motorcycle of the deceased. Accordingly, FIR No. 638230 was lodged with P.S. NIT District Faridabad, Haryana against the respondent No.1.

4. Thereafter, the appellants/claimants have filed claim petition before the learned Tribunal. As respondent No. 1 did not appear before the learned Tribunal, he was proceeded *ex parte* vide order dated 19.07.2007.

5. Learned counsel appearing on behalf of the appellants has submitted that the appellants have examined PW4, 5, 6, 7, 8, 10 and 11 for proving the salary of the deceased. The witnesses have stated before the court that the deceased was a dog trainer and he used to visit their places as per requirement to train their dogs. They have also proved the salary certificates issued by them; however, the same were issued after the death of the deceased.

6. Learned counsel for the appellants has submitted that the learned Tribunal has not considered the details of salaries received by the deceased,

which is annexed as Annexure 'D' at page 67. He further submitted that the deceased was not in permanent employment with anyone and used to attend whenever there was a call to train the dogs.

7. On the other hand, learned counsel, appearing on behalf of the respondent No.2/Insurance Company, has opposed the instant appeal and submitted that none of the witnesses have produced any proof of the money being given to the deceased nor the same was reflected by them in their income tax returns. The appellants could not prove how and in what manner the deceased used to receive money from them. Moreover, neither any bank account was being maintained by the deceased nor any income tax returns filed by the deceased have been placed on record. Therefore, the learned Tribunal has rightly come to the conclusion that PW4, 5, 6, 7, 8 10 and 11 have not filed any proof reflecting that alleged salary/remuneration given to the deceased. Moreover, the same was not reflected by them in their income tax returns. It is important to note that they had issued the certificates of amount being paid after the demise of the deceased. They failed to produce any proof of the employment/contract with the deceased.

8. Further submitted that neither any income tax returns nor any documents relating to diploma or educational qualification of the deceased being a qualified dog trainer have been produced by the appellants. Therefore, the learned Tribunal has rightly considered the salary of the deceased as Rs.3,760/- per month as per the Minimum Wages Act applicable for a matriculate on the date of the accident.

9. After perusing the evidence produced by the appellants, it is emerged that the deceased used to visit whenever there was a call to train the dogs

and used to earn some amount. Though it is not established how much amount the deceased was earning from the said employment, but number of persons have bothered to come to the court and stated on oath that the deceased was a dog trainer and visited their places. However, it is true that none of the witnesses had reflected the money given to the deceased in their income tax returns. Neither any income tax return of the deceased had been filed nor any documentary proof had been placed on record by the appellants showing that the deceased had deposited the amount in a bank account. Therefore, in the absence of the same, the appellants could not prove the exact earning of the deceased.

10. It is also true that the employment being self-employed and freelancer is not a permanent one. But it is also true that such persons earn regularly through their clients. Whenever, work of one client is over, they shift to another one. Thus, it forms a chain and that amounts to regular or permanent employment.

11. Considering the testimonies of all the aforesaid witnesses and the fact that the accident in question occurred on 18.08.2006, I am of the considered opinion that the deceased might be earning Rs.10,000/- per month at the time of accident. Accordingly, the income/salary of the deceased is considered as Rs.10,000/- per month.

12. Keeping in view the dictum of ***Rajesh & Ors. Vs. Rajbir Singh, (2013) SCALE 563***, the appellants are entitled for future prospects. He died in the accident at the age of 41 years. Therefore, I grant 30% towards future prospects.

13. I note, the learned Tribunal has not granted any compensation on account of future prospects and the compensation awarded towards non-pecuniary heads is also on lower side.

14. The learned Tribunal has granted a compensation of Rs.10,000/- each for loss of love and affection, as there are four dependents. I enhance the same as Rs.1,00,000/-.

15. For loss of consortium, the learned Tribunal has granted only Rs.10,000/-. The same is enhanced to Rs.1,00,000/-.

16. Compensation towards funeral expenses has been granted as Rs.10,000/-. I enhance the same to Rs.25,000/-.

17. In view of the above, the appellants are entitled to the following enhanced compensation amount:-

Sr. No.	Compensation Head	Granted by the Ld Tribunal	Enhanced by this Court
1.	Loss of dependency	Rs.4,73,760/-	Rs.16,38,000/-
2.	Loss of love and affection	Rs. 40,000/-	Rs. 1,00,000/-
3.	Loss of consortium	Rs. 10,000/-	Rs. 1,00,000/-
4.	Medical Expenses	Nil	Nil
5.	Loss of future prospects	Nil	30%
6.	Pain and suffering	Nil	Nil
7.	Funeral expenses	Rs. 10,000/-	Rs. 25,000/-
8.	Loss to estate	Rs. 10,000/-	Rs. 10,000/-

	Total	Rs.5,43,760/-	Rs.18,73,000/-
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18. Resultantly, the enhanced amount of compensation would come to Rs.13,39,240/- (Rs.18,73,000 - Rs. 5,43,760/-). The enhanced amount will carry interest @ 7.5% as awarded by the learned Tribunal from the date of the filing of the appeal till realization.

19. Consequently, the respondent No.2/Insurance Company is directed to deposit the aforementioned enhanced amount of compensation with upto date interest with the Registrar General of this Court within six weeks from today. Needless to state that enhanced amount shall be apportioned equally among the claimants in terms of order dated 20.11.2010.

20. The instant appeal is allowed on the above terms.

21. There is no order as to costs.

SURESH KAIT, J.

AUGUST 22, 2013

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