**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-5952-2012 (O&M)
Judgment reserved on 8.9.2015
Date of pronouncement: 14.10.2015

Smt.Mukesh and others

...Appellants

Versus

Hanuman Sahay and others

...Respondents

**CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.JS Yadav, Advocate for the appellants

None for respondents. No.1 and 2

Mr.MB Jain, Advocate
for respondent No.3- Insurance Co.

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**SNEH PRASHAR, J.**

**CM-27748-CII-2012**

The present application under Section 5 of the Limitation Act is for condonation of delay of 70 days in filing the appeal.

Despite sufficient opportunity given, no reply has been filed by the respondents.

For the reasons enumerated in the application, the same is allowed. Delay of 70 days in filing the appeal is hereby condoned.

**Main Appeal**

The present appeal has been filed by the claimants-appellants for enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal'), vide award dated 21.4.2012, on account of the death of Satish Kumar in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard and record perused.

It is submitted by learned counsel for the appellants that the deceased was a proficient driver and was earning Rs.9000/- per month, but learned Tribunal has wrongly assessed his income as Rs.4200/- per month treating him to be an ordinary labourer. Learned counsel also asserted that no amount has been awarded towards loss of love and affection and future prospects. The amounts awarded towards loss of consortium and last rites are also on the lower side.

Controverting these submissions, learned counsel appearing for respondent No.3- Insurance Company submitted that learned Tribunal considered the father of the deceased as dependent and made deduction to the extent of $1/4^{th}$ instead of $1/3^{rd}$ when there were only three dependents i.e. widow and two children of the deceased. Learned counsel asserted that the amounts awarded under other heads are just and adequate.

There is no denial that the death of Satish Kumar occurred due to a motor vehicular accident caused by respondent No.1-driver of the offending vehicle. As regards income of the deceased, the claimants alleged that he was a trained driver, but no substantive and reliable evidence could be led by them to support their claim. It could also not be proved that the deceased was earning Rs.9,000/- per month. As such, the amount of Rs.4200/- per month assessed as monthly income of the deceased by learned Tribunal, which was the amount a daily wager could earn in the year 2010 is adequate and justified.

In the case in hand, as per PMR of the deceased, he was 40 years of age at the time of his death. The learned Tribunal applied the multiplier of 14, which appears to be correct.

However, perusal of the award shows that no amount was added to the income of the deceased towards future prospects. In **Rajesh and others vs. Rajbir Singh and others 2013 (9) SCC 54**, in para 11, the Hon'ble Supreme Court has observed as under:

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also

> to the self employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons of fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

In view of the above, the claimants-appellants is held entitled to an increase in the income of the deceased by 30% towards future prospects.

The argument of learned counsel for the insurance company that the father was not to be considered as a dependent of the deceased, has to be accepted in absence of evidence of the claimants/appellants that he was having no independent income of his own. The father, being the head of the family, must be earning for himself and his family and was not a dependent of the deceased as was laid down in **Smt. Sarla Verma vs. D.T.C. and another 2009(3) RCR (Civil) 77.** Accordingly the total number of dependents are three i.e. widow and two children and therefore, the deduction towards personal expenses of the deceased has to be 1/3rd his income.

No amount has been awarded towards loss of love and affection to the children. Untimely death of Satish Kumar was a great shock to his family. He was the sole bread earner of his family. Keeping in view the said facts a sum of Rs.30,000/- is allowed to both the children in equal share towards loss of love and affection. The claimant-wife has also lost her life partner. Therefore, the amount awarded towards loss of consortium is enhanced from Rs.10,000/- to Rs. One Lac. The amount awarded towards transportation and last rites is enhanced from Rs.10,000/- to Rs.25,000/-.

Accordingly, the total compensation comes to Rs. 7,66,520/- i.e. Rs.4200/- (monthly income) + 30% (future prospects)-1/3rd (deduction towards personal expenses of the deceased) x 12 x 14 (multiplier) + Rs.1,55,000 /- (conventional heads). The enhanced amount of Rs.2,17,520/- (7,66,520-5,49,000 already awarded) is not deposited by the Insurance Company within 45 days from the date of receipt of the certified copy of this judgment, the same shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation. The enhanced amount shall be disbursed to the claimants -appellants in the manner indicated in this judgment as well as in the impugned Award.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

14.10.2015 **(SNEH PRASHAR)**
gsv **JUDGE**