IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6189-2015 (O&M)
Date of decision: 10.12.2015

Manju and others

...Appellants

Versus

Mohammed Shameem and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Vivek Khatri, Advocate for the appellants

****

SNEH PRASHAR, J.

CM-19600-CII-2015

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 47 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 47 days in filing the appeal is hereby condoned subject to all just exceptions.

Main appeal

By filing the present appeal, the claimants-appellants have sought enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal') vide award dated 11.3.2015, on account of death of Subhash @ Tony in a motor vehicular accident.

Subhash @ Tony (husband of appellant No.1 and father of appellants No.2 and 3) lost his life in a vehicular accident, which took place on 3.9.2013 whereby the motorcycle, he was riding, was hit by a Canter bearing registration No.HR-45A-6796 (hereinafter referred to 'the Canter') being driven rashly and negligently by respondent No.1 Mohammed Shammeem and owned by respondent No.2 Ishwar Singh. The offending Canter was insured with respondent No.3- Insurance Company. Accepting the deposition of PW8 Vijay Kumar Manager, Sales Patrol Pump, Hansi, who proved the salary certificate Ex.P24 of the deceased, according to which, last drawn salary of the deceased for the month of August, 2013 was Rs.5600/-, learned Tribunal assessed the income of the deceased as Rs.5600/- per month and Rs.67,200/- per annum. The deceased was 35 years old at the time of his death. Accordingly, relying upon **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54,** 50% of the annual income assessed was added in consideration of future prospects and the income of the deceased was finally calculated as Rs.1,00,800/- per annum. The dependents of the deceased being five in number (including father of the deceased), $1/4^{th}$ of the income was deducted towards personal and living expenses of the deceased and multiplier of 16 was applied. A sum of

Rs.1 lac was awarded to the widow on account of loss of estate and further Rs.1 lac to the mother on account of loss of love and affection. Rs.25,000/- was allowed towards transportation and funeral expenses. Apart from the same, a sum of Rs.1,01,000/- was awarded towards medical expenses and a total sum of Rs. 16,35,600/- was awarded as compensation to the appellants.

The submissions made by learned counsel for the appellants have been considered.

Learned counsel for the appellants argued that the income of the deceased assessed by learned Tribunal was on the lower side. He was employed as salesman with Goyal Petrol Pump, Hansi and in addition to that he used to breed and trade in milch animals and his total earnings were Rs.30,000/- per month. As regards deduction towards personal and living expenses of the deceased, learned counsel contended that it should have been 1/10th of the income. Also 100% increase in the income of the deceased should have been allowed since the age of the deceased was only 35 years. To support his argument, he relied upon **New India Assurance Co. Ltd. vs. Gopali and others 2012(3) RCR (Civil) 818**.

In Gopali and others' case (supra), the vehicular accident had taken place on 9.3.1992. The deceased was 36 years old. He was getting salary of Rs.3000/- per month and was having nine family members. In the case in hand, the appellant examined PW8 Vijay Kumar, Sales Manager, Goyal Petrol Pump Hansi, who produced the salary record of the deceased and proved the salary certificate Ex.P24, according to which, the salary of the deceased for the month of August, 2013 was Rs.5600/-. No other substantive and reliable evidence was produced by the claimants-appellants to prove that in addition to the salary, the deceased had additional income from breeding and trading in milch animals, selling milk and milk products. As such, the monthly income of the deceased was rightly assessed as Rs.5600/-.

The Hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil 170** has held 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 law laid down by the Apex Court, the annual income of the deceased was enhanced by 50% in consideration of future prospects and accordingly his annual income was calculated as Rs.1,00,800/-which is fair and appropriate.

As regards deduction towards personal and living expenses of the deceased, the deceased is survived by five family members among whom appellant No.5 is his father. In **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,** the Hon'ble Supreme Court held as under:-

> 14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra,* the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.

Even if the father is included as a dependent, yet as laid down in Sarla Verma's case (supra) 1/4th has to be deducted towards personal and living expenses of the deceased and that is the deduction made by learned Tribunal, which calls for no intervention.

In addition to the same, relying upon **Vimal Kanwar and others vs. Kishore Dan and others (2013-3) PLR 776**, learned Tribunal has awarded Rs.One lac on account of loss of consortium to appellant No.1 widow and further an amount of Rs.One lac on account of loss of love and affection to the mother. An amount of Rs.25,000/- has been allowed under the head of transportation and funeral expenses of the deceased. Apart from it, all the medical bills produced by the appellants for an amount of Rs.1,01,000/- have already been allowed.

Thus, seen from all angles, the award passed by learned Tribunal is adequate and judicious and calls for no intervention. As such, the present appeal being bereft of merit is dismissed.

10.12.2015 **(SNEH PRASHAR)**
gsv **JUDGE**