IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 7042 of 2015 (O&M)
Date of Decision : 14.10.2015

Shri Ram General Insurance Co. Ltd. ....Appellant

Versus

Smt. Mazidan and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for the appellant.

Surinder Gupta, J. (Oral)

CM No. 22082-CII of 2015

This is an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay.

Learned counsel for the applicant-appellant has argued that the delay took place in procedural tangles involved in seeking approval of regional office to file appeal. However, the appellant has not gained due to delay in filing appeal in any manner.

In view of submission of learned counsel for appellant and reasons stated in the application, which is supported by affidavit, delay of 75 days in filing the instant appeal is condoned.

FAO No. 7042 of 2015

Heard.

This is an appeal against award dated 08.04.2015, passed by Motor Accident Claims Tribunal, Gurgaon (later referred to as 'the Tribunal') whereby compensation of ₹ 13,30,000/- was awarded to the claimants Majidan and others i.e. respondents no. 1 to 6 in this appeal for the death of Shokin (later referred to as 'the deceased') in a motor accident with dumper bearing registration no. HR-74-7001 (later referred to as 'the offending vehicle').

Learned counsel for the appellant has assailed the award on two grounds; firstly, that accident was because of head on collusion between the bus bearing registration no. RJ-18P-1881 and the offending vehicle. Hon'ble Apex court in the case of ***Bijoy Kumar Duggar*** **vs.** ***Bindya Dhar Datta*, *2006 (3) RCR (Civil) 590*** has observed that where there is a head on collusion between two vehicles there must be contributory negligence on the part of drivers of both the vehicles. The claimants did not implead the owner and driver of the bus involved in the accident and the Tribunal has not taken note of the fact that the accident was due to contributory negligence of drivers of both the vehicles.

The Tribunal while pondering over this question has observed in para 13 of the award that from the testimonies of eye-witnesses and the evidence on record, it was proved that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver. The plea that it was a head on collusion, as such, was a case of composite negligence, was discarded.

This award has disposed of two claim petitions. One was filed by Mazidan claiming compensation for the death of Shokin her husband in the accident and the other was filed by Akbar son of Jal Singh, claiming compensation for the injuries received by him.

It appears that the Insurance Company has conceded the observation regarding rashness and negligence of driver of the offending vehicle as cause of accident by not challenging the observation of the Tribunal in connected case. No appeal has been filed against the award of compensation to another injured in accident, Akbar son of Jai Singh. This fact has been verified from learned counsel for the appellant who states that till date no such appeal has been filed by Insurance Company. The period of limitation has already expired and even this appeal has also been filed after a delay of 75 days.

As the Insurance Company has conceded the findings of the Tribunal in the case of other injured Akbar, which was also disposed of vide the same award, the above argument of learned counsel for the appellant has no merit and is not required to be discussed in detail, as such, discarded.

The second argument of learned counsel for the appellant is that the Tribunal has wrongly allowed 50% addition towards the future prospects, relying on the judgment in the case of ***Rajesh and others* vs. *Rajbir Singh and others*, 2013 (9) SCC 54**, particularly when the matter is under consideration before the Hon'ble Apex Court in the reference made in case of ***National Insurance Company Limited* vs. *Pushpa and others*, Appeal (C) No.8058 of 2014,** decided on 02.07.2014

(MANU/SC/1246/2014) and ***Shashikala and others vs. Gangalakshmamma and another*, *2015 (3) RCR (Civil) 510***.

In the case of ***Pushpa (supra)***, while differing with the view taken in case of ***Sarla Verma and others vs. Delhi Transport Corporation and anr.* *(2009)6 SCC 121,*** it was observed as follows:-

> *"18. Therefore, we do not think that while making the observations in the last three lines of para 24 of* **Sarla Verma** *judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."*

In case of ***Rajesh (supra)***, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

> *"11. Since, the Court in* **Santosh Devi v. National Insurance Co. Limited and Ors. (2012) 6 SCC 421** *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 persons 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 with 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.

*12. In **Sarla Verma's case (supra)**, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."*

Reference was made to judgment of larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)***, on 02.07.2014. In the recent judgment dated May 15, 2015 in case titled ***Munna Lal Jain and others* vs. *Vipin Kumar Sharma and others* 2015 (3) RCR (Civil) 447** and ***Asha Verman and others* vs. *Maharaj Singh and others*, 2015 (3) Law Herald (P&H) 1895 (SC)** Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of ***Rajesh (supra)***. As the view taken in case of ***Rajesh (supra)*** has been followed by three Judges bench of Hon'ble Apex Court in ***Munna Lal Jain's case (supra)***, the Tribunal committed no error while allowing 50% addition of the income towards future prospects while allowing the compensation to the claimants.

No interference on this score is called for.

No other point has been argued by learned counsel for the appellant.

This appeal has no merits. Dismissed.

October 14, 2015 **(SURINDER GUPTA)**
jk **JUDGE**