

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

FAO-936-2014 (O&M)

Date of decision: 19.10.2015

Surinder Kaur and others

...Appellants

Versus

Harvinder Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Sarwan Sehgal, Advocate for the appellants

Mr.RN Singhal, Advocate for respondent No.3

SNEH PRASHAR, J.

CM-3121-CII-2014

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 11 days in re-filing the appeal.

Despite sufficient opportunity given, no reply has been filed by respondent No.3.

For the reasons enumerated in the application, the same is allowed. Delay of 11 days in re-filing the appeal is hereby condoned subject to all just exceptions.

FAO-936-2014

The present appeal has been filed by the claimants-appellant seeking enhancement of the compensation awarded to

them by learned Motor Accident Claims Tribunal, Ludhiana (for short 'the Tribunal') on account of death of Gurcharan Singh in a road side accident.

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

Learned counsel for the appellants submitted that the deceased was running a milk dairy and was earning Rs.15,000/- per month, but treating him to be an unskilled labourer, learned Tribunal erred in assessing the income of the deceased as Rs.4000/- per month. He further submitted that appellants No.2 and 3 being the natural legal heirs of the deceased are entitled to compensation; no amount has been awarded towards loss of love and affection; and the amount awarded towards loss of consortium and funeral is inadequate.

On the other hand, learned counsel for respondent No.3- Insurance Company resisted the prayer of the appellants. He submitted that appellants No.2 and 3, both the sons of the deceased are major. They were not the dependents of the deceased and therefore, learned Tribunal has rightly declined compensation to them. Otherwise, also, a just and appropriate compensation has been allowed to the claimants.

It is an admitted fact that death of Gurcharan Singh had

taken place in a road side accident due to rash and negligent driving of respondent No.1. As the offending vehicle was insured with respondent No.3, the liability to indemnify the insured and pay the awarded amount is on the Insurance Company-respondent No.3. To substantiate their claim that the deceased was running a dairy and earning more than Rs.15,000/- per month, the appellants could not produce any concrete and reliable evidence. In the absence of the same, learned Tribunal had rightly assessed the income of the deceased as Rs.4000/- per month considering him as daily wager.

Admittedly, appellants No.2 and 3 sons of the deceased are young and self dependent persons. In her statement appellant No.1, their mother, conceded this fact. As such, learned Tribunal, has rightly declined the claim of appellants No.2 and 3. However, appellant No.1, being wife of the deceased, has rightly been held entitled to claim.

The amount awarded under the heads of loss of consortium and funeral expenses appears to be inadequate and therefore, the same is enhanced as under:-

1. Rs.5000/- for loss of consortium to Rs.One lac
2. Rs.5000/- for funeral expenses to Rs.25,000/-

The enhanced compensation of Rs.1,15,000/- shall be paid to claimant-appellant No.1, who is the wife of the deceased,

within a period of 45 days from the date of the receipt of the certified copy of the judgment, failing which, the same shall carry interest @ 7.5% per annum from the date of the filing of the appeal till its realisation.

Resultantly, the present appeal is partly allowed and the impugned Award is modified to the above extent.

19.10.2015
gsv

(SNEH PRASHAR)
JUDGE