

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

**FAO No.1400 of 2001 (O&M).
Date of Decision: 28.04.2016.**

Dharmender Kumar and othersAppellants.

VERSUS

Satbir and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. M.S. Kathuria, Advocate for the appellants.

Mr. Zorawar Singh, Advocate for respondents No.1 and 2.

Mr. V.K. Garg, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-7965-CII-2001

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 76 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 76 days in filing the appeal is hereby condoned, subject to all just exceptions.

FAO No.1400 of 2001 (O&M)

By way of this appeal, appellants-claimants Dharmender

Kumar-son, Muni-daughter, Reshma-widow and Dei-mother of injured-Ram Avtar (since deceased), seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Jhajjar (for short, “the Tribunal”) vide award dated 25.08.2000 passed in MACT Case No.109 of 1998 filed by Ram Avtar, on account of injuries sustained by him in a vehicular accident.

Precisely, the facts are that on 15.06.1998 Sadhu Ram alongwith Roop Ram and Ram Avtar had gone to Katuwas (Rajasthan) for purchasing stone by means of motorcycle No.DBW-4290 (for short, “the motorcycle”). While returning to Sahlawas when they reached near the tubewell of one Munshi Ram, a jeep bearing registration No.HR-34-4764 (hereinafter referred to as the “offending jeep”), being driven rashly, negligently and in a high speed by Satbir (respondent No.1), came from Kanina side and struck against the motorcycle. As a result of the accident, Sadhu Ram died at the spot and Ram Avtar sustained serious injuries.

A First Information Report No.157 dated 16.06.1998 under Sections 279, 337, 304-A and 427 of the Indian Penal Code in respect of the accident was registered against respondent-Satbir at Police Station Kanina.

Injured-Ram Avtar (claimant) filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) against the driver, owner and insurer (respondents No.1 to 3) of the offending jeep claiming compensation for the injuries suffered by him during the accident. However, during pendency of the petition, injured-Ram Avtar died and his legal representatives-appellants were brought on record. The petition was

contested by the respondents. Respondents No.1 and 2 in their joint written statement submitted that the accident occurred due to the rash and negligent driving of the motorcycle driver. Respondent No.3 filed separate written statement denying its liability to pay compensation on the ground that the driver of the offending jeep was not holding a valid driving licence at the time of accident.

On the basis of the rival pleadings of the parties, issues were settled. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly allowed the petition and awarded compensation of Rs.58,000/- to the appellants alongwith interest at the rate of 12% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the award, the appellants preferred the instant appeal.

The submissions made by Mr. M.S. Kathuria, learned counsel for the appellants, Mr. Zorawar Singh, learned counsel for respondents No.1 and 2 and Mr. V.K. Garg, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants argued that Ram Avtar had suffered injuries on his head and right leg. He was taken to Civil Hospital, Kanina from where he was referred to P.G.I.M.S., Rohtak. He also got treatment for about 2-2½ months at Moda Clinic where his right leg was operated upon and there was shortening of 1½” of leg and he became permanently disabled. He remained hospitalized from 16.06.1998 to

21.06.1998 at P.G.I.M.S., Rohtak, from 23.08.1998 to 08.09.1998 and 19.11.1998 to 16.12.1998 at Moda Nursing Home, Rohtak. About Rs.1.5 lacs were spent by Ram Avtar on his treatment, however, the appellants have not been adequately compensated by learned Tribunal.

It was rightly observed by learned Tribunal that injured-Ram Avtar died a natural death. It is not even the case of the appellants that he died as a result of injuries suffered by him in the accident. Since the injured has died, the appellants being his legal representatives are entitled to compensation to the extent of pecuniary loss i.e. loss to estate due to the injuries the deceased-claimant suffered during the accident. In **Indraj vs. Naresh Kumar, 1999(2) S.L.J. 1443** it was held as under:-

“On a consideration of the controversy, it is clear that a claim petition would not abate on the death of the claimant insofar as the claim relates to the pecuniary loss caused to the deceased as a result of the motor accident. If there was any loss to the estate of the deceased, cause of action would survive. If the deceased suffered economic loss also and had initiated action prior to his death, the beneficiaries shall be allowed to recover the same from the persons responsible for causing that loss. Loss to the estate may include loss of earnings of the deceased and loss to her property. On their substitution, the legal representatives shall be permitted to prosecute only that part of the claim of the deceased, which related to the loss to her estate.”

There are no two thoughts on the proposition of law cited above. The amount of Rs.53,000/- awarded as compensation to the appellants for expenses on treatment of Ram Avtar including medicines is just and adequate and needs no modification. However learned Tribunal erred in awarding Rs.5000/- as compensation for loss of earning during the period of treatment. Injured-Ram Avtar remained admitted from 16.06.1998 to 21.06.1998 at P.G.I.M.S., Rohtak, from 23.08.1998 to 08.09.1998 and 19.11.1998 to 16.12.1998 at Moda Nursing Home, Rohtak which proves that for about six months he was confined to bed due to the injuries suffered by him. He may not have been able to attend to his routine work for another four months. It was the plea of injured-Ram Avtar that he was running a vegetable shop and also used to sell milk and by doing so he was earning Rs.6000/- per month. In absence of any substantive and reliable evidence regarding income of the deceased and considering him as a casual labourer, his income is assessed as Rs.3000/- per month and an amount of Rs.30,000/- is allowed to the appellants on account of loss of income of Ram Avtar for ten months. The said amount of Rs.30,000/- will include the amount of Rs.5000/- already awarded by learned Tribunal under this head. No amount was awarded by learned Tribunal under the head of transportation and special diet. Needless to say that during the period of hospitalization, Ram Avtar required a full time attendant. Even if his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding-lodging. He also must have spent on his own transportation and special diet etc. On all these

counts, a further amount of Rs.10,000/- is allowed.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 25.08.2000 passed by learned Tribunal is modified. The enhanced compensation of Rs.35,000/- shall be paid to the appellants within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

28.04.2016.
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