

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

FAO No.724 of 2001 (O&M).

Date of Decision: 17.02.2016.

Nasib Kaur and another

....Appellants.

VERSUS

Balwinder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vivek Sharma, Advocate for
Mr. Gurcharan Dass, Advocate for the appellants.

Mr. Sudesh Sahi, Advocate for respondent No.1.

Respondent No.2 exparte.

Mr. Manoj Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-4195-CII-2001

This is an application under Section 151 of the Code of Civil Procedure read with Section 5 of the Limitation Act seeking condonation of 11 days delay in refiling the appeal.

In view of the averments made in the application, delay of 11 days in refiling the appeal is condoned.

C.M. stands disposed of.

FAO-724-2001

This is an appeal filed by appellants Nasib Kaur and another, legal heirs of Joginder Singh, who lost his life in a motor vehicular accident

on 22.03.1995. The appellants-claimants seek enhancement of compensation awarded to them vide award dated 18.01.2000 passed by Motor Accident Claims Tribunal, Ludhiana (for short, “the Tribunal”) in MACT Petition No.50 of 1995.

The relevant facts are as under:-

On 22.03.1995 Joginder Singh (since deceased) alongwith his son Gurjant Singh was going to village Nohra. When they reached near village Dhandala, a bus bearing registration No.PB-10A-9505, (hereinafter referred as to “the offending bus”) being driven rashly and negligently, came from Ranjit Garh side without blowing horn and hit Joginder Singh. As a result of accident, Joginder Singh sustained multiple injuries and died on the way to Civil Hospital, Nabha, District Patiala.

A First Information Report No.20 of 1995 in respect of the accident was registered at Police Station Bhadson on the statement of Gurjant Singh.

The appellants-claimants filed a petition seeking compensation under Section 166 of the Act of 1988 alleging that the accident occurred entirely due to rash and negligent driving of the offending bus by respondent Balwinder Singh.

The claim petition was contested by the respondents. In their written statements, respondents No.1 and 2 (driver and owner of the offending bus) denied the occurrence of accident involving their bus. Respondent-insurer (Oriental Insurance Company Ltd.) submitted that the claim petition was not maintainable because the offending bus was not

insured with it on the date of alleged accident. The policy was initially issued for the period 03.02.1995 to 02.02.1996 and the cheque of the premium was received vide collection dated 06.02.1995 which was dishonoured. The policy was cancelled and the insured was accordingly informed. A fresh policy was subsequently issued in favour of respondent No.2 w.e.f. 30.03.1995 to 29.03.1995 whereas the accident took place on 22.03.1995.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal awarded compensation to the tune of Rs.1,00,000/-. Respondents No.1 and 2 were held jointly and severally liable for payment of the compensation amount and respondent No.3 (insurer) was absolved of the liability.

Feeling unsatisfied with the award dated 18.01.2000, the claimants-appellants have preferred the instant appeal.

None has appeared for and on behalf of respondent No.2 despite the case having been called twice. Respondent No.2 is thus proceeded against exparte.

The submissions made by Mr. Vivek Sharma, learned counsel for the appellants, Mr. Sudesh Sahi, learned counsel for respondent No.1 and Mr. Manoj Bajaj, learned counsel for respondent No.3 insurance company have been heard and record perused.

Learned counsel for the appellants-claimants argued that the

income of the deceased was wrongly assessed as Rs.1500/- per month whereas he was earning Rs.3000/- to Rs.4000/- per month. No addition to the income was made computing the future prospects of the deceased. The deduction of Rs.500/- towards personal and living expenses of the deceased was wrongly made and the multiplier of '8' was also wrongly adopted. The amount awarded under the head of loss of consortium and funeral expenses is on lower side and no amount was awarded for loss of love and affection to the claimants.

Deceased Joginder Singh was stated to be a mason by profession and learned Tribunal assessed his income as Rs.1500/- per month. Rightly so, because PW2 Sucha Singh, witness of the claimants, stated that the deceased used to work 20 days in a month on daily wages at the rate of Rs.75/- per day. Following the ratio of **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** there had to be an addition of 15% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow.

The age of Joginder Singh, when he died in accident, was 55 years and the multiplier of '11' should have been applied by the Tribunal instead of '8' as per the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77**. The deceased was survived by widow Nasib Kaur, three sons Karnail Singh, Gurjant Singh and Harbans Singh and parents Gurdial Kaur and Arjun Singh. Therefore, as held in **Sarla Verma and others**' case (supra) the deduction towards personal and living expenses of the deceased should be

1/4th. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)	Rs.1500/-
2.	Actual age of the deceased	55 years
3.	Increase in future income as per Rajbir Singh and others' case (supra)	Rs.225/-
4.	Annual dependency	3/4 of Rs.1725 x 12 = Rs.15,525/-
5.	Multiplier	11
6.	Total	Rs.1,70,775/-

In addition to the amount of Rs.1,70,775/- calculated towards dependency, the amount of Rs.2000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.2000/- awarded towards loss of consortium to the widow is enhanced to Rs.1 lac. A further amount of Rs.1 lac is awarded to the appellants-claimants for loss of love and affection. In the above premise, the appellants-claimants are held entitled to compensation of Rs.3,95,775/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 18.01.2000 passed by the Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.2,95,775/- in addition to the amount of Rs.1,00,000/- already awarded by the Tribunal. The enhanced amount of compensation shall be deposited 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 appeal till realization. The amount of compensation will be

disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

17.02.2016.
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