

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

(1)

**FAO No.60 of 2004 (O&M)
Date of decision : 08.09.2016**

Ali Mohammad and another

.....Appellants

Versus

Nigam Dutt and others

...Respondents

(2)

**FAO No.61 of 2004 (O&M)
Date of decision : 08.09.2016**

Ali Mohammad and another

.....Appellants

Versus

Nigam Dutt and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Pankaj Jain, Advocate for appellants in both the appeals.
None for respondent No.1.
Mr. Neeraj Khanna, Advocate for respondent No.3.

DARSHAN SINGH, J.

**CM-76-CII-2004 in
FAO No.60 of 2004**

There is delay of 195 days in re-filing the present appeal.
The appellants have filed an application under Section 151 of the Code of
Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 195 days in re-filing the present appeal is hereby condoned.

CM-77-CII-2004 in
FAO No.60 of 2004

There is delay of 23 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 23 days in filing the present appeal is hereby condoned.

CM-78-CII-2004 in
FAO No.61 of 2004

There is delay of 195 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 195 days in re-filing the present appeal is hereby condoned.

CM-79-CII-2004 in
FAO No.61 of 2004

There is delay of 23 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 23 days in filing the present appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 17.12.2002, passed by learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter called the “Tribunal”), vide which the appellants-claimants have been awarded compensation to the tune of Rs.30,000/- each for the death of their two children namely Taleem Hussain and Kabir Ahmad in the motor vehicular accident, which took place on 23.12.1999.

2. The appeals have been preferred for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the record carefully.

4. Learned counsel for the appellants, contended that the claimants have lost their two sons in this accident but the learned Tribunal has awarded only a sum of Rs.30,000/- as compensation for each child, which is highly inadequate. He contended that deceased Kabir Ahmad was nine years of age and was helping his parents in domestic chores. Deceased Taleem Hussain was six years of age.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the accident has taken place about 17

years back. The learned Tribunal has based the award on the basis of law laid down by the Andhra Pradesh High Court in case ***Amati Hymavathi and another Vs. Nissankararao Srikrishnamurthy and another 2000 ACJ 350***. Thus, he contended that there is no ground for enhancement of amount of compensation.

6. I have duly considered the aforesaid contentions.

7. The appellants-claimants have claimed the compensation to the tune of Rs.2,00,000/- each for the death of their two mail children in the present motor vehicular accident, but the law is well settled that it is the duty of the Tribunal to award just compensation. There is no restriction on the Court that it can only award the amount of compensation claimed by the claimants in the claim petition. If on computation of the amount of compensation as per law, the just and appropriate compensation comes to more than the amount claimed by the claimant, the same can certainly be awarded. Three Judges Bench of Hon'ble Apex Court in case ***Nagappa Vs. Gurudayal Singh AIR 2003 SC 674***, has laid down that it is the duty of the Tribunal to award just and appropriate compensation. There is no restriction that it can award only up to the amount claimed by the claimants. In case ***Ibrahim Vs. Raju and others 2011(4) RCR (Civil) 863***, again the Hon'ble Apex Court has laid down that Tribunal can award compensation more than what was claimed by the claimant. In that case the claimants had claimed the compensation to the tune of Rs.3,00,000/-, the Hon'ble Supreme Court has enhanced the amount of compensation to the tune of Rs.6,00,000/-.

Again in case *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service 2013(4) RCR (Civil) 732*, the same legal position has been reiterated that Tribunal/Court can award compensation more than that claimed by the claimants.

8. The appellants have lost their two male children in this accident. Deceased Kabir Ahmad was about nine years of age, whereas Taleem Hussain was about six years of age. It is further alleged that they were the student and were brilliant in studies, however, no documentary evidence to this effect has been brought on record. Learned counsel for the appellants has categorically pleaded that deceased Kabir Ahmad was assisting his parents in domestic chores, so he was rendering help to his parents. In case *Krishan Gopal and another Vs. Lala and others 2013(4) RCR (Civil) 276*, the Hon'ble Apex Court has granted Rs.5,00,000/- as compensation in case of death of a ten years old child. This authority is fully applicable qua the case of death of Kabir Ahmad. So, the appellants-claimants are entitled to a sum of Rs.5,00,000/- as compensation on account of death of their son Kabir Ahmad in FAO No.60 of 2004, arising out of MACT case No.61 of 2000.

9. However, deceased Taleem Hussain was a child of tender age about six years. There is no material on record to show that he was rendering any help to the parents. Thus, keeping in view the age of deceased Taleem Hussain and financial status of the family, in my opinion the compensation of Rs.2,50,000/- shall be just and proper. So, the appellants-claimants in FAO No.61 of 2004 arising out of MACT

case No.60 of 2000 are entitled to a sum of Rs.2,50,000/- as compensation on account of death of their son Taleem Hussain.

10. Thus, keeping in view my aforesaid discussion, both the FAOs filed by appellants-claimants are hereby partly allowed. The amount of compensation payable to appellants-claimants in FAO No.61 of 2004 on account of death of their son Taleem Hussain is enhanced from Rs.30,000/- to Rs.2,50,000/-. The amount of compensation payable to appellants-claimants in FAO No.60 of 2004 on account of death of their son Kabir Ahmad is enhanced from Rs.30,000/- to Rs.5,00,000/-. The Insurance Company is directed to make the payment of aforesaid amount within 60 days from the date of this judgment, otherwise the appellants-claimants shall be entitled to interest at the rate of 6% per annum from the date of filing the petition till realisation.

08.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No