

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.83 of 2006

Date of Decision: 29.09.2016

Ashok Kumar and others

... Appellants

Vs.

Jasbir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ravinder Malik, Advocate,
for the appellants.

None for respondent No.3-insurance company.

Amol Rattan Singh, J.

CM No.247-CII of 2006

By this application condonation of a delay of 678 days in filing the accompanying appeal is sought by the appellants who were claimants before the learned Motor Accident Claims Tribunal, Rohtak.

It is stated in the application that due to the shock of the death of their father in the accident out of which the claim petition arose, it took a long time for them to recover, thereby causing the delay.

Though such an inordinate delay of almost 1 year and 11 months is difficult to understand even for the aforesaid reason, however, since the appeal has been pending for the year 2006 in this Court and the records of the case were burnt in the fire accident that took place in January 2011 in the

record-room of this Court, and even the orders passed by this Court between the time of filing of the appeal and the date of the fire are missing, the delay is condoned.

However, if the accompanying appeal is to be allowed by enhancement of the compensation awarded by the Tribunal, then interest in any such enhancement of compensation thereupon, would, naturally, have to be awarded after excluding the period of delay in filing the appeal.

FAO No.83 of 2006

By this appeal, enhancement of the compensation of Rs.6,69,800/- awarded by the learned Motor Accident Claims Tribunal, Rohtak, vide its impugned Award, dated 14.10.2003, is sought by the appellants, who were the claimants before the Tribunal.

2. The facts leading to the filing of the claim petition under Section 166 of the Motor Vehicles Act, 1988, as taken from the impugned Award, are that on 11.03.1998, Ramphal Singh, father of the appellants-claimants, accompanied by one Rajinder Singh, Executive Officer-cum-Secretary, Market Committee, Rohtak, was going from Sampla to Kurukshetra in a Government jeep bearing registration no.HR-03-A-8446, driven by Ramphal himself, who was employed as a driver with the said Market Committee.

At about 10:00 am, the jeep is stated to have reached near Chauhan Petrol Pump, on National Highway No.1, towards Kurukshetra, when a truck bearing registration no.MP-20G-4450, allegedly driven at a

high speed, rashly and negligently, by respondent no.1 herein, came to the wrong side of the road and struck the vehicle in which Ramphal and the aforesaid Rajinder Singh were travelling, alongwith one Ram Kumar. All three of them are stated to have been injured and shifted to the General Hospital, Karnal, by one Vijender Singh and Manjit Singh. However, Rajinder Singh and Ramphal are stated to have died before reaching the hospital, whereas Ram Kumar became unconscious and was eventually shifted to the PGIMS, Rohtak. However, as the present appeal pertains to compensation for the death of Ramphal alone, only that aspect is being looked into.

3. In response to the claim petition filed by the present appellants, respondent No.2, i.e. the owner of the truck in question, contested the petition, denying the accident with his vehicle and further stating that a false FIR had been lodged against his driver and if at all any negligence of the driver is found, then the insurance company, i.e. respondent no.3, with which the vehicle was insured, was liable to pay the compensation awarded.

The insurance company contested the claim petition stating that “offending vehicle” was not insured with it, therefore, it was not a necessary party and the insurer had not informed the company about the accident.

It needs to be noticed here that in another claim petition filed by the injured, i.e. Ram Kumar Mudgil, other than impleading the respondents in the claim petition filed by the present appellant, he had also impleaded the present appellants and the owner of the jeep, i.e. the Haryana State Agricultural Marketing Board, and its insurer, as respondents in his claim

petition. The first two appellants herein contested that claim petition stating that it was not the negligence of their father, Ramphal, that had caused the accident and that no question of contributory negligence arises.

4. Upon the aforesaid pleadings, the learned Tribunal framed the following issues in the two claim petitions that had been consolidated to be decided together by it:-

1. Whether the accident in question took place due to the rash and negligent driving of respondent no.1 while driving truck No.MP-20G-4450, owned by respondent No.2 and insured with respondent No.3 or by the rash and negligent driving of deceased Ramphal, while driving jeep no.HR-03-A-8446, owned by respondent no.7, in which Rampahl died and Ram Kumar had received multiple injuries? OPP
2. If issue no.1 is proved, as to what amount of compensation, the petitioners are entitled to recover? OPP
3. Whether respondent no.1 & Ramphal deceased driver were not holding valid and effective driving licence on the date of accident? OPR3
4. Relief.

5. Upon the issues of negligence, after appraising the evidence led, including the statement of an eye witness, Vijender Singh, the Tribunal finally came to the conclusion that it was the negligence of respondent No.1 herein, i.e. the driver of the truck, that had led to the accident in which deceased Ramphal unfortunately lost his life. That finding is not shown to have been challenged in any appeal filed by the respondents, before this Court.

6. Coming therefore to the issue of compensation awarded by the

Tribunal to the present appellants.

The salary of the deceased was proved to have been Rs.5660/- per month at the time of his death, of which Rs.100/- was payable as medical allowances and Rs.20/- as washing allowance, which was deducted by the Tribunal, thereby holding that his net salary come to Rs.5540/- per month or Rs.66,480/- per annum. To the said amount, a 1/3rd cut was applied by the Tribunal, towards the personal expenses of the deceased, thereby arriving at a loss of dependent income of Rs.44,320/-.

Accepting the age of the deceased to be 45 years, a multiplier of 15 was applied, thereby coming to a total loss of income to the appellants to be Rs.6,64,800/-.

Other than that, they were held entitled to a sum of Rs.5000/- on account of transportation and funeral expenses and were, consequently, awarded a total sum of Rs.6,69,800/- vide the impugned Award.

On the aforesaid sum, they were also held entitled to interest @ 9% per annum, for a period of three years prior to the date of the Award. This was done by citing judgments of the Madhya Pradesh High Court in Bhayla and another v. Abdul Kaym and others 2000 ACJ 546, Taj Singh alias Tejpal Singh v. Madhya Pradesh State Road Transport Corporation and another 2000 ACJ 214 and Peetamber Parsad Ratle and other v. State of Madhya Pradesh 1998 ACJ 1255, as also one of the Himachal Pradesh High Court in Inder Singh v. Himachal Pradesh Road Transport Corporation 1993 ACJ 620, wherein it was stated to be held that the respondents could not be burdened with interest on account of the delay,

either by the claimant in adducing evidence, or due to the appeal remaining pending before the High Court for 12 years.

7. Before this Court, Mr. Ravinder Malik, learned counsel for the appellants, submitted that firstly, the Tribunal erred in not awarding any compensation to the appellants, i.e. the children of the deceased, for the loss of love and affection of their father. Secondly, he submitted that a 1/4th deduction should have been made towards the personal living expenses of the deceased, and not 1/3rd, in view of the fact that he had five children, i.e. the appellants-claimants.

Learned counsel next submitted that the amount of Rs.5000/- awarded for transportation and funeral expenses was also highly inadequate and should be Rs.25,000/-, in terms of law settled on that issue.

Lastly, Mr. Malik submitted that the Tribunal wholly erred in awarding interest only for a period of three years prior to the date of the Award, i.e. 14.10.2003, inasmuch as, it was not the fault of the appellants-claimants that the claim petition remained pending for a period of five and half years before its final decision.

8. None having appeared for the respondents, and no cross appeal/cross-objections having been filed, what is to be considered by this Court is whether the compensation awarded was sufficient, or in any manner inadequate.

As regards the compensation awarded towards transportation and funeral expenses, I agree with the learned counsel for the appellants, that even though the accident is of the year 1998, Rs.5000/- was an inadequate

amount awarded, because even as per the judgment of the hon'ble Supreme Court in **Vimal Kanwar and others vs. Kishore Dan and others (2013) 7 SCC 476**, where the accident was of the year 1996, Rs.25,000/- had been awarded towards funeral expenses, which has been constantly followed thereafter. Thus, the same amount, i.e. Rs.25,000/-, is awarded to the appellants towards the funeral expenses and transportation charges, of the father of the appellants.

9. I also agree with the learned counsel for the appellants that even though the appellants are not shown to be minor children of the deceased, even in the memo of parties before the Tribunal, however, compensation for the loss of love and affection of their father should have been awarded. Normally, to adult children, this Court has been awarding Rs.50,000/-, even though that is an inadequate sum for the loss of love and affection of a parent; and therefore, the appellants are held entitled to the aforesaid sum of Rs.50,000/- each, under that head.

10. Coming then to the issue of loss of income of the deceased. Obviously, since the income was assessed as per the salary of the deceased, that part requires no interference with, but the deceased having five children, though with their ages not given it cannot be determined as to whether any of them was earning or not, they would be presumed to be non-earning, with no objection in that regard having been raised before the Tribunal.

Therefore, a deduction of 1/4th should have been applied by the Tribunal towards the personal living expenses of the deceased, in terms of the ratio of the law laid down in the judgment of the Supreme Court in

Rajesh and others Vs. Rajbir and others 2013 (3) RCR (Civil) 170.

Accordingly, to the annual salary of Rs.66,480/-, if a cut of 1/4th is applied, the loss of annual income to the appellants works out to Rs.49,860/-. However, in terms of the ratio of the judgment in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, where the deceased was 45 years old, the multiplier to be applied would be 14 and not 15, as was done by the Tribunal. Hence, to the aforesaid sum of Rs.49,860/-, applying a multiplier of 14, the loss of income works out to Rs.6,98,040/-.

However, the deceased was shown to have been in permanent salaried employment; therefore in terms of *Sarla Verma's* case, read with the judgment in **Reshma Kumari and others v. Madan Mohan and another (2013) 9 SCC 65**, 30% is to be added to the annual income of the deceased, since he was between the age of 40 to 50 years. Thus, 30% of the annual income of the deceased works out to Rs.14,958/-, to which again a 1/4th deduction is to be applied, towards the personal living expenses of the deceased, thereby coming to a figure of Rs.11,218.50 paise, as the annual loss of prospects of an increased income to the appellants. Again, to that sum, a multiplier of 14 is to be applied, eventually coming to a figure of Rs.1,57,059/- as the total loss of future prospects of an increased dependent income to the appellants.

Hence, adding that sum to the loss of actual income calculated earlier, i.e. the sum of Rs.6,98,040/-, the total loss of dependent income to the appellants comes to Rs.8,55,099/-.

11. Accordingly, the following compensation is now awarded to the appellants:-

i)	Total loss of income	:	Rs.8,55,099/-
ii)	Towards loss of love and affection (Rs.50,000/- to each appellant)	:	Rs.2,00,000/-
iii)	Towards funeral expenses	:	Rs.25,000/-
Total		:	10,80,099/-

12. Coming eventually to the question of whether the restriction of interest payable on the compensation awarded by the Tribunal, for a period of three years prior to the date of the Award, was correct or not.

In this regard, it is to be noticed that the Tribunal, in paragraph 30 of its Award, has stated that “Sufficient period was consumed by the petitioners of these petitions to get summoned the respondents and then to conclude their evidence”.

It was for this reason that the interest of 9% per annum, awarded on the compensation amount of Rs.6,69,800/-, was restricted to three years prior to the date of the Award.

I see no error in that finding of the Tribunal, in view of the fact that it has not been shown by learned counsel for the appellants that the finding of the Tribunal, to the effect that the delay in pronouncing the Award, of five and half years, from the date of institution of the claim petition, was not caused by the delayed examination of witnesses that the appellants-claimants wished to examine.

13. Coming then to the interest to be awarded by this Court on the enhanced amount of compensation of Rs.4,10,299/-.

Conventionally, this Court has been awarding 6% interest per annum, on the enhanced compensation, where the appeal has been pending for long before this Court, as in the present case, for a period of 13 years. However, the appeal itself having been filed after a delay of 678 days, most certainly that period has to be excluded even in respect of the enhanced compensation.

Accordingly, on the enhanced amount of Rs.4,10,299/-, awarded by this Court, interest @ 6% per annum is ordered to be paid by the respondents, running from the date of the filing of this appeal, till the date of the realisation of the amount.

Payment of the enhanced compensation would be joint and several liability of all the respondents, with the insurance company, respondent No.3, liable to indemnify respondent No.2 in respect of the enhanced amount also.

14. The appeal is accordingly allowed to the above extent, with no order as to costs.

September 29, 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No