

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

**FAO No.5428 of 2009 (O&M)
Date of decision : 04.02.2016**

Rakesh Kumar

.....Appellant

Versus

Mahender Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Sushil Sheoran, Advocate for
Mr. R.A. Sheoran, Advocate for appellant.

DARSHAN SINGH, J.

CM-26885-CII-2009

There is delay of 52 days in filing the present appeal. The appellant has 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.

FAO-5428-2009

2. The present appeal has been preferred against the award

dated 28.02.2009, passed by learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the 'Tribunal') vide which the appellant has been awarded a sum of Rs.1,06,000/- as compensation on account of death of his mother Krishna Devi in the motor vehicular accident, which took place on 14.10.2004. The present appeal has been preferred only for enhancement of the amount of compensation.

3. Notice of the appeal was issued to respondents No.2, 3, 4 and 7, however, none appeared on their behalf despite service and accordingly they were proceeded against ex parte vide order dated 08.09.2014. The appellant did not seek any relief against respondents No.5 & 6, so their names were ordered to be deleted from the array of respondents vide order dated 08.09.2014. Initially respondent No.1 was put in appearance through Mr. Sanjeev Kumar Advocate, but later on, none has appeared on his behalf and accordingly, respondent No.1 was also proceeded against ex parte vide order dated 20.04.2015.

4. I have heard Mr. Sushil Sheoran, Advocate for Mr. R.A. Sheoran, Advocate, learned counsel for the appellant and gone through the paper-book carefully.

5. Learned counsel for the appellant contended that learned Tribunal has wrongly deducted 2/3rd of the income of the deceased towards her personal and living expenses. The multiplier has also been wrongly applied of 8 instead of 11. Only Rs.10,000/- has been awarded towards transportation and funeral expenses. No amount has been awarded towards loss of estate and love and affection.

6. I find substance in the aforesaid contentions raised by

learned counsel for the appellant. The learned Tribunal has assessed the income of the deceased to be Rs.3000/- per month. The claimant is the only son of the deceased. The learned Tribunal has deducted 2/3rd of the income of the deceased towards her living and personal expenses. But only claimant was dependent upon the income of the deceased. So, 50% should have been deducted towards personal and living expenses of the deceased from her income determined by the learned Tribunal. So, the loss of dependency comes to Rs.1500/- per month i.e. Rs.18,000/- per annum.

7. The age of the deceased at the time of the accident was 52 years. As per the law laid down in case ***Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77*** the multiplier of 11 should have been applied. So, the multiplicand comes to Rs.1,98,000/-.

8. The claimant will be further entitled to a sum of Rs.15,000/- towards loss of estate. The learned Tribunal has awarded Rs.10,000/- towards transportation and funeral expenses, which are enhanced to Rs.25,000/-.

9. The claimant was the major son of the deceased and was himself employed as a teacher. So, he was not entitled for any compensation for loss of love, care and guidance which is only permissible to the minor children. In this way, the total amount of compensation as determined by this Court comes to Rs.2,38,000/-. So, the amount of compensation is enhanced from Rs.1,06,000/- to Rs.2,38,000/-. So, there will be increase of Rs.1,32,000/- over and above the compensation awarded by the learned Tribunal.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced by Rs.1,32,000/- raising the total amount of compensation/ award to Rs.2,38,000/- instead of Rs.1,06,000/- as awarded by the learned Tribunal. The claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realization @ 7.5% per annum, the rate of interest as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

04.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**