

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

FAO No.3704 of 2011 (O&M)

Date of decision : 07.09.2016

Gurtej Singh and another

.....Appellants

Versus

Raj Kumar Thapa and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Raghubir Tejpal, Advocate for appellants.

Mr. R.C. Kapoor, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-13652-CII-2011

There is delay of 93 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, the same is hereby allowed and the delay of 93 days in re-filing the present appeal is hereby condoned.

CM-13651-CII-2011

There is delay of 09 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, the same is hereby allowed and the delay of 09 days in filing the present appeal is hereby condoned.

FAO No.3704 of 2011

The present appeal has been preferred against the award dated 21.07.2010, passed by learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter called the 'Tribunal') vide which the appellants-claimants have been awarded a sum of Rs.4,28,000/- as compensation on account of death of Smt. Sukhwinder Kaur in the motor vehicular accident which took place on 21.02.2009.

2. The present appeal has been filed by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Learned counsel for the appellants-claimants contended that the learned Tribunal has wrongly deducted 1/3rd of the notional income of deceased, which is not permissible under the law. He further contended that no amount towards loss of love and affection has been awarded to appellant-claimant No.2, the minor child of deceased. Very less amounts of compensation have been awarded towards transportation, funeral and last rites expenses and towards loss of consortium to appellant-claimant No.1, the husband of deceased.

5. On the other hand, learned counsel for respondent-

Insurance Company contended that appellant-claimant No.1 is the husband of deceased, so he was not dependent upon the income of the deceased. The compensation awarded by the learned Tribunal to the appellants-claimants under the other conventional heads is just and appropriate and no enhancement is called for.

6. I have duly considered the aforesaid contentions and found considerable substance in the contentions raised by learned counsel for the appellants-claimants.

7. Instant appeal has been filed by appellant-claimant No.1 Gurtej Singh, the husband of deceased and appellant-claimant No.2 the minor son of deceased Smt. Sukhwinder Kaur, who has died in this accident. She was a house wife. The learned Tribunal has taken Rs.3000/- per month as notional income of the deceased but the learned Tribunal has deducted Rs.1000/- i.e. 1/3rd of her notional income towards her personal and living expenses. As the law laid down by the Division Bench of this Court in case ***Paramjit Singh and another Vs. Dilbag Singh alias Bagga and others 2014(4) RCR (Civil) 895***, 1/3rd deduction is not permissible in case of notional income of the housewife. So, the entire notional income of deceased Smt. Sukhwinder Kaur shall be taken into consideration. The learned Tribunal has determined the income of the deceased to be Rs.3000/- per month i.e. Rs.36,000/- per annum. The age of deceased Smt. Sukhwinder Kaur was 33 years at the time of the accident. As per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009)***

6 SCC 121, the multiplier of 16 shall be applicable. The loss of dependency comes to Rs.5,76,000/-.

8. The learned Tribunal has awarded very meagre amount of Rs.10,000/- towards loss of consortium and Rs.10,000/- towards transportation, funeral and last rites expenses. The same are liable to be enhanced. Thus, in addition to the aforesaid amount of Rs.5,76,000/-, appellant-claimant No.1 Gurtej Singh, the husband of deceased shall be entitled to Rs.1,00,000/- towards loss of consortium. The appellant-claimant No.2 the minor son of deceased shall be entitled to a sum of Rs.1,00,000/- towards loss of love, care and guidance. The appellants-claimants shall also be entitled to Rs.25,000/- towards transportation, funeral and last rites expenses. Thus, the total amount of compensation payable to the appellants-claimants in comes to Rs.8,01,000/-.

9. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.8,01,000/- from Rs.4,28,000/- as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate 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.

07.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No