

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

**FAO No.1745 of 2013 (O&M).
Date of Decision: 03.03.2016.**

Seema and others

....Appellants.

VERSUS

Ram Sahai and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Surender Saini, Advocate for the appellants.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-8870-CII of 2013

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 415 days in refiling the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 415 days in refiling the appeal is hereby condoned subject to all just exceptions.

FAO-1745-2013 (O&M)

This is an appeal filed by appellants Seema and others seeking enhancement of compensation amount awarded vide award dated 17.08.2011 passed by Motor Accident Claims Tribunal, Sonapat (for short,

“the Tribunal”) in MACT Case No.79 of 2009 on account of death of Satyawar (husband of appellant No.1, father of appellants No.2 and 3 and son of appellant No.4) who died in a vehicular accident.

On 30.08.2009, when Satyawar (since deceased) alongwith one Manjit son of Balwan Singh was going from Mundlana to Gohana driving a Canter, at about 8:30 a.m. his Canter was hit by a Container bearing registration No.HR-38M-3983 (hereinafter referred as to “the offending container”) being driven rashly, negligently and in a high speed by its driver (respondent No.1). As a result of the accident, Satyawar sustained grievous injuries. He was shifted to PGIMS, Rohtak where he succumbed to the injuries.

The claimants-appellants filed a petition seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) on the ground that the accident occurred entirely due to rash and negligent driving of the offending container by respondent Ram Sahai.

The claim petition was contested by the respondents. In their written statements, respondents No.1 and 2 denied the occurrence of accident and all other averments of the claimants. Respondent-insurer (National Insurance Company Ltd.) raised preliminary objection that respondent No.1 was not holding a valid and effective driving licence at the time of accident and that amounted to violation of terms and conditions of the insurance policy.

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 held that the accident took place due to contributory negligence of the deceased and respondent No.1. The claim petition was partly allowed and the claimants were held entitled to compensation to the tune of Rs.8,07,000/- alongwith interest at the rate of 7.5% per annum from the date of filing the petition. The respondents were held jointly and severally liable to pay half of the amount of compensation to the claimants i.e. Rs.4,03,500/-.

Feeling unsatisfied with the award dated 17.08.2011, the claimants-appellants have preferred the instant appeal.

The submissions made by Mr. Surender Saini, learned counsel for the appellants and Mr. D.K. Prajapati, learned counsel for respondent-insurance company have been heard and record perused.

Learned counsel for the appellants-claimants argued that the learned Tribunal has erred in holding contributory negligence on part of the deceased in causing the accident. The income of the deceased was also wrongly assessed as Rs.5500/- per month whereas as per statement of PW3 Lekh Raj, he was earning Rs.6000/- per month + Rs.100/- per day towards food expenses.

Dealing with the issue of negligence in driving the Canter by the deceased and the offending Container by respondent No.1 which resulted in causing the accident in question, the findings of learned Tribunal are as under:-

“A vehicle being driven by Satyawar (since deceased)

and the vehicle coming from the opposite direction struck against each other. The driver of the vehicle coming from opposite direction has not stepped into the witness box, yet, at the same time there is a situation where the vehicle being driven by Satyawar (since deceased) was overtaking the other vehicle, he was supposed to insure that his overtaking would not be a source of danger to the other traffic coming from the opposite direction. He should not have overtaken the ongoing vehicle when he noticed the other vehicle coming from the opposite direction. Thus, it cannot be said that Satyawar (since deceased) had exercised caution while overtaking the ongoing truck. Thus, equal contribution was cast upon Satyawar (since deceased) and respondent No.1. The drivers of both the vehicles were equally liable for the above said accident.”

Learned counsel for the appellants-claimants failed to demonstrate any illegality or perversity in the above findings of learned Tribunal. The deceased should not have proceeded to overtake the truck going ahead of his Canter when the offending Container was coming from the opposite direction. Under the traffic rules overtaking is permissible only when the road on the other side is clear. Thus, the findings of the Tribunal call for no intervention.

Deceased Satyawar was a driver by profession. PW1 Seema deposed that her husband was employed as driver with PW3 Lekh Raj and was earning Rs.8000/- per month. PW3 Lekh Raj testified that deceased Satyawar was his driver and he used to pay salary Rs.6000/- per month + Rs.100/- per day as expenses for food. No substantive or reliable evidence

was led either by the claimants or by PW3 Lekh Raj to prove that the deceased used to get Rs.8000/- per month. However, considering the occupation of the deceased, learned Tribunal rightly assessed his income as Rs.5500/- per month. The age of deceased Satyawar, when he died in accident, was 38 years and the multiplier of '15' should have been applied by the Tribunal instead of '16' 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 Seema, two minor children Aditya and Arti and mother Kamla, therefore, as held in **Sarla Verma and others'** case (supra) the deduction of 1/4th towards personal and living expenses was rightly made by learned Tribunal. At the same time in the light of ratio of **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)	Rs.5500/-
2.	Actual age of the deceased	38 years
3.	Increase in future income as per Rajbir Singh and others' case (supra)	Rs.2750/-
4.	Annual dependency	1/4 of Rs.8250 x 12 = Rs.74,256/-
5.	Multiplier	15
6.	Total	Rs.11,13,840/-

In addition to the amount of Rs.11,13,840/- calculated towards dependency, the amount of Rs.5,000/- awarded under the head of funeral

expenses is enhanced to Rs.25,000/- whereas the amount of Rs.5000/- awarded towards loss of estate is enhanced to Rs.10,000/-. The amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.50,000/- each is awarded to the appellants-claimants No.2 to 4 for loss of love and affection. The rate of interest allowed by learned Tribunal shall remain the same. In the above premise, the total compensation comes to Rs.13,98,840/-. It is a contributory negligence case as indicated above, therefore, the claimants will be entitled to only half of the enhanced compensation.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 17.08.2011 passed by the Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.2,95,920/- in addition to the amount of Rs.4,03,500/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company 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 this order 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

03.03.2016.
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