IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 196 of 2013(O&M)
Date of Decision: 01.03.2016

SONIKA JAIDKA AND ANR ...Appellants

Versus

HAKAM SINGH AND ORS ....Respondents

CORAM:HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Gaurav Bhaiya, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3.

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SNEH PRASHAR, J.(Oral)

CM No. 1018-CII of 2013

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 38 days in filing the appeal.

For the reasons mentioned in the application the delay of 38 days in filing the appeal is condoned.

Application stands disposed of.

FAO No. 196 of 2013

1. Assailing the award dated 14.08.2012 passed in MACT case No.74 of 01.10.2009 by Motor Accident Claims Tribunal, Ludhiana (for short, the Tribunal). The instant appeal was filed by the appellants for enhancement of compensation awarded to them on account of

death of Jatinder Kumar Jaidka husband of appellant No.1, father of appellant No.2 and son of appellants No.3 and 4 in a motor vehicular accident that took place on 26.07.2009.

On 26.07.2009, Jatinder Kumar Jaidka(since deceased) was driving the Ford Endeavour Car bearing registration No. PB-CJ-9697 alongwith his family was returning from Amritsar to Ludhiana. At about 7:30 p.m. when they reached near Ladhowal Chowk, a trolla bearing registration No.Pb-29-G-8513 (hereinafter referred to as the offending trolla) being driven rashly, negligently and in a high speed by its driver (Hakam Singh-respondent No.1) suddenly turned towards right side without giving any indication/signal on which the deceased being driver of the Endeavour car applied brakes and made rigorous attempt to save the accident but the car struck against the rear portion of the trolla. Due to impact of the accident Jatinder Kumar sustained multiple grievous injuries. His head was badly crushed and he succumbed to the injuries on the spot. The other members sitting in the car also sustained injuries and were taken to CMC Hospital Ludhiana. A first information report No.41 dated 27.07.2009 under Sections 279,337,338,304-A, 427 of IPC was registered at police station Ladowal on the statement of Parmod Chander Jaidka (father of the deceased).

The deceased-Jatinder Kumar Jaidka is survived by his widow, a minor daughter, mother and father who filed a claim petition invoking the provisions of Section 166 of the Motor Vehicle Act, 1988 (for short 'the Act of 1988') for compensation against driver, owner and insurer of the offending trolla(respondents). The petition was allowed by learned Tribunal and compensation to the tune of Rs.7,15,600/- along with interest @ 6% per annum from the date of filing of the claim petition till realisation, in case the amount was paid within two months from the date of award otherwise the interest to be paid @ 12% per annum, was awarded.

Feeling dissatisfied the claimants filed the instant appeal.

3. Submissions made by Mr. Gaurav Bhaiya, Advocate representing the appellants and Mr. Lalit Garg, Advocate representing respondent No.3 have been heard and record perused.

4. It is not disputed that Jatinder Kumar Jaidka suffered multiple serious and grievous injuries during the vehicular accident and succumbed to the injuries on the spot. The finding of the learned Tribunal that the accident occurred due to rash and negligent driving of the offending trolla by respondent No.1 has not been challenged by the respondents. As regards the quantum of compensation, learned counsel for the claimants argued that the deceased was employed as Manager with M/S Jaidka Timber Store, Shivaji Nagar, Ludhiana and was earning Rs.1,49,379/- which included salary of Rs. 1,44,000/- per annum. The income tax returns of the deceased for the year 2009-2010, 2008-2009, 2007-2008 as Ex. PW3/A, Ex. PW3/B , Ex. PW3/C were tendered in evidence by the claimants which show that salary of deceased was Rs.1,44,000/- per annum.

Considering the income tax returns of deceased, learned Tribunal assessed the annual income of the deceased as Rs.1,17,600/-

and applied the multiplier of 18 to the same as the age of the deceased was 24 years at the time of accident. However no addition to the income was made for computing the future prospects of the deceased and amount of Rs. 10,000/- awarded towards loss of consortium and funeral expenses is on a very lower side. Moreso, no amount was awarded to the minor daughter for loss of love, care and guidance. Under all the conventional heads the compensation is required to be enhanced.

5. The accident had taken place on 26.07.2009 and as per the income tax return pertaining to the year 2007-2008 Ex. CW3/B of the deceased, learned Tribunal assessed the annual income of the deceased as Rs.1,17,600/- which is appropriate.

In **Rajesh and others Vs. Rajbir Singh and others 2013(9) SCC 54** the Hon'ble Supreme Court has observed as under:

> “11. Since, the Court in Santosh Devi's case(supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case(supra) and to make it applicable also to the self employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons of fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of deceased while

computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

6. In the instant case, the age of the deceased was taken as 24 years by learned Tribunal on the mere ocular testimony of appellant No.1-Sonika widow of the deceased. Although the deceased was an income tax payee but no document worth in its name was produced to prove his date of birth. It is important to note that in the petition Sonika, widow of the deceased, mentioned her own age as 35 years and the age of father and mother of the deceased as 48 and 46 years respectively. The pleadings of the claimants as regard the age are apparently vague. If the widow of the deceased was 35 years old it does not appeal to a prudent mind that in normal circumstances the age of her husband (deceased) was 24 years. The age of the parents must be much more than indicated in the petition. When the age of the widow was 35 years it can well be assumed that the age of the deceased was not less than 36 years when he died in the accident.

Applying the ratio of **Rajesh and others case (supra),** 50% of the income of the deceased is to be added towards future prospects. Father of the deceased, namely, Parmod Chander Jaidka (claimant No.3) was earning independently and was not a dependent on the income of the deceased. In that manner only the widow, minor daughter and mother are the dependents of the deceased and accordingly as held in ***Smt. Sarla Verma and others Vs. Delhi***

Transport Corporation and another, 2009(3) RCR(Civil) 77, 1/3rd of the income is to be deducted towards personal and living expenses of the deceased. The age of the deceased being 36 years the appropriate multiplier will be 15.

7. Further, the amount of Rs.5,000/- awarded towards loss of consortium to widow is enhanced to Rs.100,000/- and the funeral expenses are also enhanced to Rs.25,000/-. Further amount of Rs. 1,00,000/- on account of loss of love, care and guidance is awarded to the minor daughter (claimant No.2) and an amount of Rs.50,000/- is awarded for loss of love and affection to the mother (claimant No.4). Accordingly, the compensation is calculated as under:

Sr. No.	Heads	Calculations
1.	Annual income	Rs.1,17,600/-
2.	50% of income to be added as Future prospects	Rs. 1,17,600+ 58800= 1,76,400/-
3.	1/3rd of the income is to be deducted towards personal and living expenses	Rs.176400- 58800=117600
4.	Compensation after applying multiplier of 15	117600*15=1764000
5.	Loss of consortium	Rs.1,00,000/-
6.	Loss of love, care and guidance to minor daughter	Rs.1,00,000/-
7.	Loss of love and affection to mother	Rs.50,000/-
8.	Funeral Charges	Rs.25,000/-

The enhanced amount of Rs. 1323400/- (2039000-7,15,600) be deposited by the Insurance Company within two months from the date of receipt of the certified copy of this judgment, failing which , the same shall carry interest @ 7.5% per annum from the date of filing of the appeal till its realization. The enhanced amount shall be disbursed to the appellants-claimants in the manner indicated in this judgment as well as in the impugned award.

Accordingly, the award dated 14.08.2012 stands modified to the above extent and the present appeal is partly allowed.

March 01, 2016 **[SNEH PRASHAR]**
rashmi **JUDGE**