

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

**C.M No.9806-CII-2013 in/and
F.A.O No.2038-2013
Date of Decision : 18.01.2016**

Smt. Devi Garg and others

..... Appellants

Versus

Suresh Kumar and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Rahul Gautam, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the respondent No.2-insurance company.

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

AJAY TEWARI, J. (Oral)

C.M. No.9806-CII-2013

This is an application for condonation of delay of 3390 days in filing the appeal on the ground that the claimants had engaged a counsel who had informed them that the appeal had been filed but actually that counsel never filed any appeal and thereby misled them and it was only later when they met the present counsel they were able to ascertain that in fact no appeal had been filed. Further against the previous counsel various cases of

cheating are pending.

Reply has been filed to oppose the prayer for condoning the delay.

Keeping in mind the stark circumstances, I do not deem it appropriate to non-suit the claimants on the ground of delay.

For the reasons recorded, the application is allowed. Delay is condoned. It is however made clear that the appellants will not be entitled to any interest for the period of delay i.e. 3390 days.

F.A.O No.2038-2013

This appeal has been filed by the claimants for the enhancement of compensation and to modify the award dated 22.07.2003 on account of death of Shiv Kumar Garg, aged 48 years, in a motor vehicular accident.

The Tribunal while taking the income of Rs.22,500/- p.m. assessed the dependency at Rs.1,80,000/- p.a. while applying the deduction of $\frac{1}{3}^{\text{rd}}$. The Tribunal applied the multiplier of 10. The Tribunal further awarded Rs.2000/- towards funeral charges and Rs.5000/- towards loss of consortium to the widow and awarded total compensation of Rs.18,27,000/- along with interest @ 9% p.a.

Learned counsel for the appellants has argued that multiplier of 13 has to be applied instead of 10 as per the age of the deceased and the deduction of $\frac{1}{4}^{\text{th}}$ has to be applied instead of $\frac{1}{3}^{\text{rd}}$ as held by the Hon'ble Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*.

Learned counsel for the appellants has further argued that as

per the law laid down in *Rajesh and others v. Rajbir Singh and others* reported as **2013(9) SCC 54**, more amount has to be awarded on account of loss of consortium. He has further argued that 30% has to be added to the income on account of future prospects.

Learned counsel for the appellants has further argued that under conventional heads very less amount has been awarded and has relied upon the decision of the Hon'ble Supreme Court in *Vimal Kanwar and others vs. Kishore Dan and others, (2013-3) PLR 776*.

Learned counsel for the respondent No.2 has argued that the Hon'ble Supreme Court in *Rajesh and others' case* (supra) granted a total amount of Rs.1 lac towards loss of consortium to the widow.

Learned counsel for the appellants has contended that in *Vimal Kanwar and others' case* (supra), the Hon'ble Supreme Court awarded a sum of Rs.1 lac on account of loss of love and affection and another sum of Rs.1 lac towards loss of consortium to the widow.

Learned counsel for the respondent No.2 is not in a position to deny these contentions.

Keeping in view the entire conspectus of facts, I fix the multiplier at 13. I further award Rs.45,000/- more on account of loss of consortium and Rs.50,000/- on account of loss of love and affection to the appellant No.1-widow. I further direct that deduction of 1/4th has to be applied. I also add future prospects in the income with the addition of 30%. I further award Rs.5000/- more towards funeral expenses.

The enhanced amounts shall be paid along with interest @

8% p.a. from the date of filing of the claim petition till realization except for the period of 3390 days by which the appeal was delayed. Apart from the individual amounts awarded, the apportionment and management would be as per the direction of the Tribunal.

The appeal is allowed in the above terms and the award is modified accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

January 18, 2016

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**(AJAY TEWARI)
JUDGE**