

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

FAO No.1362 of 2015 (O&M)

Date of decision : 16.12.2016

Joginder and another

.....Appellants

Versus

Ashok and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ram Pal Verma, Advocate for appellants.

Mr. Lalit Garg, Advocate for respondent No.3-
Insurance Company.

DARSHAN SINGH, J.

**CM-3829-CII-2015 and
CM-3830-CII-2015**

There is delay of 99 days in re-filing the present appeal and 255 days in filing the appeal. The appellants have filed the instant applications for condonation of delay.

Learned counsel for the applicants-appellants submitted that they do not claim the interest on the enhanced amount of compensation, if any, for the period of delay caused in re-filing and filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 99 days in re-filing and 255 days in filing the

present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred against the award dated 14.08.2013, passed by the learned Motor Accidents Claims Tribunal, Sonipat (hereinafter called the “Tribunal”), in a petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby the appellants-claimants have been awarded compensation to the tune of ₹4,80,500/- on account of death of their father Mange Ram alias Manga in the motor vehicular accident which took place on 20.06.2012.

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

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

4. Initiating the arguments, learned counsel for the appellants-claimants contended that learned Tribunal has not awarded any future prospects towards the income of the deceased. He further contended that the learned Tribunal has not awarded any amount to the claimants towards loss of love and affection of their father. The funeral expenses have also been granted less. Thus, he contended that just amount of compensation has not been awarded to the claimants.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the claimants are the major sons of the deceased. So, they are not entitled for any amount on account of loss of love and affection. He further contended that the deceased was not doing any

permanent job. So, the claimants are not entitled to add anything to the income of the deceased by way of future prospects. Thus, he contended that the amount of compensation awarded by the learned Tribunal is just and appropriate.

6. I have duly considered the aforesaid contentions.

7. As per the case of the claimants, deceased Mange Ram alias Manga was a mason and contractor by profession and was earning ₹15,000/- per month. But in the absence of any documentary evidence, the learned Tribunal has considered him to be a skilled labourer and has taken the income of the deceased to be ₹4500/- per month. This conclusion of the learned Tribunal requires no interference.

8. However, learned Tribunal has not added anything towards future prospects to the income of the deceased. The deceased was 50 years of age at the time of the accident. He was a skilled person. So, his income was bound to increase with the passage of time. Thus, keeping in view the age of the deceased 15% of the income of the deceased is required to be added towards future prospects. Thus, the total income of the deceased comes to ₹5175/- per month i.e. ₹62,100/- per annum. 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹41,400/-. In view of the age of the deceased, the multiplier of 13 shall be applicable. Thus, the loss of dependency/loss to estate i.e. contribution of the deceased to the family comes to ₹5,38,200/-.

9. No doubt the claimants are the major sons of the deceased but keeping in view the set up of the Indian society, it cannot be stated that

the major sons have no love and affection to their father. The elders in the family are always considered to be guide of the family members. Even the major member of the family seeks advice from parents on every occasion in their life. Thus, the claimants cannot be denied the compensation on account of loss of love, affection and guidance simply on the ground that they were the major sons. So, the claimants shall be entitled to ₹1,00,000/- towards loss of love, affection and guidance of their father.

10. The learned Tribunal has awarded only ₹5000/- towards funeral and transport expenses, which is enhanced to ₹25,000/-. In this way, the total amount of compensation payable to the claimants comes to ₹6,63,200/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹6,63,200/- from ₹4,80,500/- as awarded by the 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 determined by the learned Tribunal, except for the period of 354 days *i.e.* the delay caused by the appellants in re-filing and filing the present appeal. The liability to pay the enhanced amount of compensation and apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

12. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, 2015 (9) SCC 166***, in order to safeguard

the interest of respondent-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

16.12.2016*sunil yadav***(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No