IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.3744 of 2013 (O&M).

Date of Decision: 18.02.2016.

Kamla Devi and another ....Appellants.

VERSUS

Kuka Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Parminder Singh, Advocate for the appellants.

Mrs. Manjari Nehru Kaul, Advocate with
Mr. Abhinandan Pandhi, Advocate for respondents No.1 and 2.

Mr. Subhash Goyal, Advocate for respondent No.3.

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SNEH PRASHAR, J.

CM-15207-CII-2013

This is an application under Section 5 of the Limitation Act seeking condonation of 66 days delay in filing the appeal.

In view of the averments made in the application, delay of 66 days in filing the appeal is condoned.

C.M. stands disposed of.

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FAO-3744-2013

This is an appeal filed by appellants Kamla Devi and another seeking enhancement of compensation awarded to them vide award dated 11.12.2012 passed by Motor Accident Claims Tribunal, Karnal (for short, "the Tribunal") in MACT Case No.RBT 207 of 2010 on account of death of Bal Kishan who lost his life in a motor vehicular accident.

The relevant facts are as under:-

On 04.03.2010 in the evening, Bal Kishan (since deceased) was driving motorcycle bearing registration No.HR-05R-2995 and Ramesh Kumar was the pillion rider when they were returning from Karnal to village Ghoghripur. As they reached near the temple of village Ghoghripur, a bus bearing registration No.HR-45-8764, (hereinafter referred as to "the offending bus") being driven rashly, negligently and in a zigzag manner by respondent Kuka Singh, came from the side of village Barota and struck into the motorcycle. Due to the impact, Bal Kishan and Ramesh Kumar fell down and sustained multiple grievous injuries. Ramesh Kumar died at the spot whereas Bal Kishan succumbed to the injuries on the way to General Hospital, Karnal.

A First Information Report No.43 dated 04.03.2010 under Sections 279 and 304-A of the Indian Penal Code in respect of the accident was registered at Police Station Madhuban against respondent No.1-Kuka Singh.

The claimants-appellants filed a claim petition seeking compensation under Sections 166 and 140 of the Act of 1988 alleging that

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the accident occurred entirely due to rash and negligent driving of the offending bus by respondent Kuka Singh.

The claim petition was contested by the respondents by filing separate written statements. 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, learned Tribunal awarded compensation to the tune of Rs.2,67,000/- to the claimants.

Feeling unsatisfied with the award dated 11.12.2012, the claimants-appellants preferred the instant appeal.

The submissions made by Mr. Parminder Singh, learned counsel for the appellants, Mrs. Manjari Nehru Kaul, learned counsel for respondents No.1 and 2 and Mr. Subhash Goyal, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellants-claimants argued that the income of the deceased was wrongly assessed as Rs.4500/- per month whereas he owned about 10 acres of land and besides being an agriculturist he was running a milk dairy and was earning Rs.10,000/- per month. Learned Tribunal also made no addition computing the future prospects of the deceased. The deduction of 1/3rd towards personal and living expenses of the deceased was wrongly done and the multiplier of '7' was wrongly applied. Also the amount awarded under the head of loss of consortium, transportation and funeral expenses is on lower side. No amount was awarded for loss of estate and loss of love and affection to the claimants.

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No substantive documentary or ocular evidence was produced to prove that the deceased owned 10 acres of agricultural land or possessed any land on lease. Learned Tribunal considering the deceased as casual labourer rightly assessed his income as Rs.4500/- per month. As per the postmortem report Ex.P1, the age of deceased Shri Bal Kishan, when he died in accident, was 64 years and the multiplier of '7' was rightly applied. The claimants are also not entitled to any increase towards future prospects. The deceased was survived by widow Kamla Devi and son Jasbir Singh and the deduction of 1/3rd towards personal and living expenses of the deceased was rightly applied by learned Tribunal.

However, considering all aspects of the case, the amount of Rs.10,000/- awarded under the head of transportation etc. is enhanced to Rs.20,000/- and the amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.25,000/- is awarded to the claimants towards funeral expenses. Another amount of Rs.1 lac is awarded to the appellants-claimants for loss of love and affection. In the above premise, the appellants-claimants are held entitled to compensation of Rs.4,97,000/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 11.12.2012 passed by the Tribunal is modified. The appellants-claimants will be entitled to enhanced compensation of Rs.2,30,000/- in addition to the amount of Rs.2,67,000/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company within 45 days from the

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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. 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

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