

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

FAO No.1858 of 2015 (O&M)

Date of decision : 18.11.2016

Smt. Geeta Devi and others

.....Appellants

Versus

Joginder Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gurinder Pal Singh, Advocate for appellants.

Mr. J.P. Jangn, Advocate for respondent No.1.

Mr. Pardeep Kumar, Advocate for
respondent No.2-Insurance Company.

DARSHAN SINGH, J.

CM-5703-CII-2015

There is delay of 38 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of the delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 38 days in re-filing the present appeal is hereby condoned.

CM-5702-CII-2015

There is delay of 57 days in filing the present appeal. The

appellants have filed an application under Section 5 of the Limitation Act for condonation of the delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 57 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the appellants-claimants against the award dated 22.05.2014, passed by learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the “Tribunal”), vide which they have been awarded compensation to the tune of Rs.14,04,000/- on account of the death of Rajesh Kumar in the motor vehicular accident which took place on 16.02.2013.

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

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

4. Learned counsel for the appellants contended that the deceased was a mason by profession and was earning Rs.25,000/- per month. He further contended that the learned Tribunal has taken the income of the deceased only to be Rs.4800/- per month, which is even lesser than the wages of the unskilled labourer fixed by the Labour Department. Thus, he contended that the income of the deceased has been taken on the lower side. He further contended that no amount has been given to the mother of

the deceased on account of loss of love and affection of her son.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the deceased is not proved to be a mason. Thus, the income taken into consideration by the learned Tribunal is justified. He contended that the compensation awarded by the learned Tribunal is just and appropriate keeping in view the antecedents, age and income of the deceased.

6. I have duly considered the aforesaid contentions.

7. Though the appellants-claimants have alleged that the deceased was working as a mason and was earning Rs.25,000/- per month but the appellants-claimants have not produced any cogent, convincing and reliable evidence to prove the occupation and income of the deceased. So, the learned Tribunal has considered the deceased to be an unskilled labourer and has taken the income of the deceased to be Rs.4800/- per month. But as per the notification issued by the Labour Commissioner, Haryana the minimum wages of the unskilled labourer with effect from 01.01.2013 were fixed to be Rs.5212.15 per month. This accident has taken place on 16.02.2013, so as per the notification issued by the Labour Commission, Haryana the income of the deceased shall be considered to be Rs.5200/- per month *i.e.* Rs.62,400/- per annum. The deceased was a young man of 26 years of age at the time of his death. The learned Tribunal has determined the age of the deceased to be 26 years and added 50% of his income towards future prospects. Thus, after adding 50% of the income of the deceased towards future prospects, the total annum income of the deceased comes to

Rs.93,600/-. Learned Tribunal has rightly deducted 1/4th of the income of the deceased towards his personal and living expenses. The remainder comes to Rs.70,200/-. As per the age of the deceased, multiplier of 17 would be applicable. The loss of dependency comes to Rs.11,93,400/-.

8. Learned Tribunal awarded a sum of Rs.77,400/- on account of treatment and medical expenses of the deceased before his death. Learned Tribunal has rightly awarded a sum of Rs.1,00,000/- to appellant-claimant No.1 Smt. Geeta Devi towards loss of consortium, a sum of Rs.1,00,000/- to appellants-claimants No.2 and 3 the minor children of the deceased towards loss of love, care and guidance of their father and a sum of Rs.25,000/- towards last rites and funeral expenses. However, the learned Tribunal has not awarded any amount to appellant-claimant No.4 Smt. Krishna the mother of the deceased. Smt. Krishna the mother of the deceased has lost her young son, so she is certainly entitled for compensation on account of loss of love and affection of her son to the extent of Rs.1,00,000/-. Thus, the total amount of compensation payable to the appellants-claimants comes to Rs.15,95,800/-.

9. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to Rs.15,95,800/- from Rs.14,04,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded by the learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount and the apportionment amongst

the claimants shall remain same as determined by the learned Tribunal in the main award.

18.11.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No