IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.366 of 2014 (O&M).
Date of Decision: 25.02.2016.

Veero and others ....Appellants.

VERSUS

Lovepreet Singh @ Lucky and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Anil Chawla, Advocate for the appellants.

Service of respondents No.1 and 2 dispensed with vide order dated 17.11.2014.

Mr. Nitin Mittal, Advocate for respondent No.3.

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SNEH PRASHAR, J.

CM1120-CII-2014

This is an application under Section 5 of the Limitation Act for condonation of 115 days delay in filing the appeal.

In view of the averments made in the application, delay of 115 days in filing the appeal is condoned.

C.M. stands disposed of.

FAO-366 of 2014

The present appeal has been filed by the claimants-appellants, seeking enhancement of the compensation awarded by the learned Motor

Accident Claims Tribunal, Amritsar (for short, "the Tribunal") vide award dated 17.04.2013 passed in MACT Case No.1854 of 2012, on account of death of Surinder Pal Singh, in a motor vehicular accident.

The facts that emerge from the record are as under:-

On 31.12.2011, Surinder Pal Singh (since deceased) had gone to Gurdwara Shaheedan Sahib by means of his motorcycle bearing registration No.PB-02BN-7053 for paying obeisance. Jarnail Singh accompanied him as a pillion rider. At about 7:30 p.m., while returning home when they reached near Shellu Welding shop, Sultanwind Road, Amritsar, an Innova car bearing registration No.PB-02AX-8566 (hereinafter referred to as the "offending car") being driven rashly, negligently and in a high speed by its driver respondent No.1-Lovepreet Singh @ Lucky, came from the opposite side and struck against the motorcycle. As a result of collision, both Surinder Pal Singh and Jarnail Singh fell down and sustained multiple injuries. Surinder Pal Singh was first taken to Guru Nanak Dev Hospital, Amritsar from where he was shifted to Guru Ram Dass Hospital, Amritsar and then to P.G.I. Chandigarh but he succumbed to the injuries on 14.01.2012.

A First Information Report No.1 dated 02.01.2012 under Sections 279, 427 and 338 (304-A added lateron) of the Indian Penal Code in respect of the accident was registered at Police Station "B" Division, Amritsar.

A petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by the appellants against driver, owner and insurer of the offending car for claiming compensation. The claim petition was contested by the respondents. On the basis of the pleadings of the parties issues were settled. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, the claim petition was allowed by the Tribunal and an amount of Rs.9,35,000/- alongwith interest at the rate of 6% per annum from the date of filing of the petition till realization of the amount was awarded to the appellants as compensation.

Feeling unsatisfied with the award dated 17.04.2013, the appellants preferred the instant appeal.

The submissions made by Mr. Anil Chawla, learned counsel for the appellants and Mr. Nitin Mittal, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the amount awarded as compensation is on the lower side. The deduction of 1/4th from the income of the deceased towards his own personal and living expenses was wrongly done and the multiplier of '16' was also not appropriate since the age of the deceased was 27 years as mentioned in the ration card Mark-7. Also the amount awarded under the head of loss of estate, loss of consortium, transportation and funeral expenses is on lower side. No amount has been awarded for loss of love and affection to the minor child.

Controverting the arguments of learned counsel for the appellants, learned counsel for the respondent-insurance company argued that the claimants were four in number including father of the deceased. As held in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,*** father of a deceased son having independent income is not to be considered as dependent of the deceased. It being so, there were three dependents namely, widow, minor son and the mother and therefore, the deduction towards personal and living expenses should have been 1/3rd and not 1/4th as done by learned Tribunal.

Admittedly, no evidence was led by the respondents to prove that father of the deceased had individual source of income and was not dependent on his son. Learned Tribunal assessed the compensation taking father-claimant No.2 Jaswant Singh as dependent of the deceased. No cross objection was filed by the insurance company assailing the said finding of the Tribunal. As such, the deduction towards personal and living expenses of the deceased taken as 1/4th by learned Tribunal calls for no intervention. The amount of Rs.51,000/- awarded towards medical expenses incurred during treatment of deceased Surinder Pal Singh is found to be adequately awarded.

Considering the evidence available on record, the income of the deceased was rightly assessed by the learned Tribunal as Rs.6,000/- per month and the multiplier of '16' was also rightly applied because in the postmortem report Ex.P36 the age of the deceased was mentioned as 36 years. The ration card was not duly proved and no document was produced to prove date of birth of the deceased. Considering him in the age group of 31 to 35 years learned Tribunal rightly applied the multiplier of '16'.

However, considering all aspects of the case, the amount of Rs.5,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/-, the amount of Rs.5,000/- awarded under the head of loss of estate is enhanced to Rs.10,000/- and the amount of Rs.10,000/- awarded towards loss of consortium is enhanced to Rs.1 lac. 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.11,50,000/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 17.04.2013 passed by the learned Tribunal is modified. The enhanced compensation in addition to the amount of Rs.9,35,000/- already awarded by learned Tribunal shall be deposited by respondent No.3- insurance company within 45 days from the 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 from the date of filing of the appeal till realization. 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

25.02.2016.
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