

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

FAO No.2899 of 2015 (O&M)

Date of decision : 06.09.2016

Smt. Laxmi and others

.....Appellants

Versus

Raj Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Anil Kumar, Advocate for appellants.

Mr. Vipul Sharma, Advocate for

Mr. Paul S. Saini, Advocate for respondent No.2.

DARSHAN SINGH, J.

CM-8828-CII-2015

There is delay of 215 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Reply to the application has been filed by respondent No.2- Insurance Company and the same is taken on record.

Heard on the application.

It is settled principle of law that the approach to condone the delay should be liberal and valuable rights of the parties should be decided on merits rather than on technicalities.

Thus, in view of the reasons mentioned in the application, I found that there is sufficient cause for condonation of delay in filing the

present appeal. Hence, the application is hereby allowed and the delay of 215 days in filing the present appeal is hereby condoned.

FAO No.2899 of 2015

The present appeal has been preferred by the appellants-claimants against the award dated 20.05.2014, passed by learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the “Tribunal”), vide which they has been awarded compensation to the tune of ₹7,29,800/- on account of the death of Bir Singh in the motor vehicular accident which took place on 15.01.2013.

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 learned Tribunal has not added any future prospects to the income of the deceased. No amount towards love and affection have been awarded to the minor children and mother of the deceased. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

5. On the other hand, Vipul Sharma, Advocate appearing for Mr. Paul S. Saini, Advocate, learned counsel for respondent-Insurance Company contended that the deceased was not having any permanent job, so future prospects were not admissible towards his income. He further 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. As per the case of the claimants, deceased Bir Singh was working as a Chowkidar of village Gokalgarh, Tehsil and Distt. Rewari and was also doing the work of dairy and pig farming and was earning Rs.20,000/- per month. But on appreciating the evidence brought on record, the learned Tribunal has rightly concluded that the appellants could not established that deceased was having any income from dairy and pig farming. So, the monthly income of the deceased was rightly taken to be ₹4200/- per month. However, the learned Tribunal has not awarded any future prospects to the income of the deceased. It is a fact of common knowledge that the income of every individual increases with the passage of time. That is why even the minimum wages are revises periodically by the government. So, the future prospects should have been added to the income of the deceased. At the time of death deceased Bir Singh was 34 years of age, so 50% of his income shall be added towards the future prospects. The total income of the deceased comes to ₹6300/- per month *i.e.* ₹75,600/- per annum. There were four dependents, so $\frac{1}{4}^{\text{th}}$ of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹56,700/-. In view of the age of the deceased, the multiplier of 16 has been correctly applied by the learned Tribunal. So, the loss of dependency comes to ₹9,07,200/-.

8. In addition to the aforesaid amount, the appellants-claimants No.2 & 3 the minor children of deceased shall be entitled to a sum of

₹1,00,000/- towards loss of love, care and guidance. Appellant-claimant No.4 the mother of deceased shall also be entitled to ₹1,00,000/- on account of loss of love and affection of her son. Learned Tribunal has rightly awarded a sum of ₹1,00,000/- to appellant-claimant No.1 Smt. Laxmi, the widow of deceased towards loss of consortium and a sum of ₹25,000/- towards funeral and last rites expenses. The total amount of compensation payable to the claimants comes to ₹ 12,32,200/-.

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 ₹12,32,200/- from ₹7,29,800/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation, except for the period of 215 days *i.e.* the delay caused by the appellants in filing the present appeal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

10. 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 No.3-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.

06.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No