

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

FAO No.5456 of 2014 (O&M)

Date of decision : 21.04.2016

Poonam Rani and others

.....Appellants

Versus

Baldev Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Narinder Singh Dadwal, Advocate for the appellants.
 Mr. Radhe Shyam Sharma, Advocate for respondent No.4.

DARSHAN SINGH, J.

CM-15189-CII-2014

There is delay of 897 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act 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 filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 897 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 27.08.2011, passed by the learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter called the 'Tribunal'), vide which the appellants-claimants have been awarded compensation to the tune of Rs.3,65,000/- on account of death of Vijay Kumar in the motor vehicular accident, which took place on 08.09.2008.

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

3. Learned counsel for the appellants contended that learned Tribunal has taken the income of the deceased on the lower side i.e. Rs.3000/- per month only. No future prospects have been awarded. The loss of dependency has also been wrongly calculated. The deceased had four dependents. There should have been 1/4th deduction instead of 1/3rd. Less amount has been awarded under the other non-conventional heads. Thus, he contended that the amount of compensation awarded by the learned Tribunal was inadequate.

4. On the other hand, learned counsel for the respondent contended that the deceased was only a daily wager. The learned Tribunal has rightly assessed the income of the deceased. He further contended that as he was just a casual labourer, so no future prospects were required to be added to his income. He further contended that learned Tribunal has

awarded the just compensation to the claimants.

5. I have duly considered the aforesaid contentions.

6. The appellants-claimants have alleged that the deceased used to earn Rs.10,000/- per month by doing the painting work in the building and Kothis but no evidence to establish this plea has been adduced. So, the learned Tribunal has considered the deceased to be the daily wager/casual labourer and his income has been taken to be Rs.3000/- per month i.e. Rs.100/- per day. The accident has taken place in the year 2008. Keeping in view the date of the accident, the income of the deceased taken by the learned Tribunal cannot be stated to be on lower side. Thus, the annual income of the deceased comes to Rs.36,000/- per month.

7. The learned Tribunal has not awarded any amount towards future prospects to the income of the deceased. It is a fact of common knowledge that with the passage of time even the income of a daily wager/casual labourer increases. The deceased was about 40 years of age. He was hale and hearty. So, there was every possibility that there will be appreciation in the income of the deceased. The Hon'ble Apex Court in cases ***Rajesh and others Vs. Rajbir and others 2013(3) RCR (Civil) 170*** and ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, has laid down that future prospects are even admissible to the persons who are self-employed. So, the future prospects should have been added to the income of the deceased. In view of the age

of the deceased, 50% of the income of the deceased is required to be added towards future prospects. So, the total income after adding future prospects comes to Rs.54,000/-.

8. There were four dependents of the deceased. The learned Tribunal has wrongly deducted 1/3rd of the income of the deceased towards personal and living expenses. In view of the law laid down by the Hon'ble Apex court in case ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR(Civil) 77***, 1/4th of the income of the deceased should have been deducted towards personal and living expenses of the deceased. Thus, the remainder comes to Rs.40,500/-. The multiplier of 15 shall be applicable. Thus, the loss of dependency comes to Rs.6,07,500/-.

9. The learned Tribunal has awarded only Rs.5000/- towards funeral charges. No amount has been awarded by the learned Tribunal to appellant-claimant No.1 Smt. Poonam Rani, the widow of the deceased. Similarly, no amount has been awarded on account of love and affection to the children and the mother. Appellant-claimant Poonam Rani shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. Appellants-claimants No.2 & 3, who were minor children of the deceased at the time of accident, shall also be entitled to a sum of Rs.1,00,000/- towards loss of love, care and guidance. Appellant-claimant No.4 Smt. Kanta Rani, mother of deceased shall be entitled to sum of Rs.1,00,000/- towards loss of love and affection of her son. The appellants shall also be entitled for a sum of Rs.25,000/- towards funeral and transportation charges. In this

way, the total amount of compensation comes to Rs.9,32,500/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.9,32,500/- from Rs.3,65,000/- as awarded by the learned 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 897 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.

21.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**