IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4744-2015 (O&M)
Date of decision: 15.2.2016

Nishabar Singh

...Appellant

Versus

Ram Phal and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rahul Deswal, Advocate for the appellant

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SNEH PRASHAR, J.

CM-14753-CII-2015

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 84 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 84 days in filing the appeal is hereby condoned subject to all just exceptions.

FAO-4744-2015

The present appeal has been filed by the appellant seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Karnal vide award dated 12.11.2014 on account of death of Gurnam Singh, son of the appellant.

The brief facts of the case are that on 15.4.2010, Gurnam Singh (since deceased) was going from Indri to Karnal by bus bearing registration no. HR-58-9025. At about 7.30 P.M., when the bus reached General Bus Stand, Karnal, he went on the roof of the bus for unloading the luggage. While he was getting down, respondent No.1 driver of the bus suddenly put the bus in motion because of which he fell down and suffered head injury. He was taken to General Hospital, Karnal, where he succumbed to the injuries. First Information Report No.436 dated 30.4.2010 under Section 279, 304-A of the Indian Penal Code was registered at Police Station City Karnal against respondent No.1 driver of the offending bus.

Appellant alongwith his wife (parents of the deceased), filed a claim petition under Section 163 A of the Motor Vehicle Act, 1988 (for short 'the Act of 1988'). During trial before the Tribunal, mother of the deceased expired. The claim petition was allowed and a sum of Rs.2,67,800/- was granted as compensation to the appellant.

Being dissatisfied, the appellant filed the present appeal.

The submissions made by learned counsel for the appellant have been heard.

It is submitted on behalf of the appellant that the deceased was a student of 12th standard. His notional income should have been taken as Rs.6000/- per month. The multiplier should have been chosen according to the age of the deceased and not as per the age of the dependents. He also urged that the deceased was a young boy but no addition was made to the monthly income assessed for computing future prospects.

The claim petition was filed under Section 163-A of the Act of 1988 by the parents of the deceased. Section 163-A of the Act of 1988 postulates that compensation is to be paid to the legal heirs of the deceased or the victim as indicated in the Second Scheduled of the Act of 1988.

In **Sarla Verma and others vs. DTC and another 2009 ACJ 1298,** the Hon'ble Apex Court held as under:-

> "Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent." In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. "

Unfortunate, for the appellant-claimant, during the pendency of the claim petition, mother of the deceased expired, but the compensation she was entitled to on the date she filed the petition has to be allowed when her successor-husband (appellant) is there to receive.

The deceased was 22 years old and was a student of 12^{th} standard. The plea of the claimants before the Tribunal was that the deceased was self employed and used to earn Rs.3300/- per month. There being no substantive evidence of his income, learned Tribunal has rightly assessed his income as Rs.3300/- per month and awarded

Rs.2,17,800/- on account of loss of dependency. The persons having income exceeding Rs.40,000/- per annum are not covered under the Second Schedule of the Act of 1988.

The appellant has further been allowed a sum of Rs.50,000/- under the conventional heads, which exceed the limits provided under the Second Schedule of the Act of 1988, but the said Act being a beneficial legislation and keeping in view the peculiar facts of the case, it will be harsh to reduce the same.

In the above premise, finding the compensation awarded by learned Tribunal as just and appropriate, the impugned Award does not warrant any intervention and the present appeal being bereft of merit is dismissed.

15.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**