

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

FAO No.925 of 2015 (O&M)

Date of decision : 18.05.2016

Ajit and others

.....Appellants

Versus

Shyam Sunder 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. G.S. Gopera, Advocate for appellants.

Mr. Ravinder Arora, Advocate for respondent No.2.

DARSHAN SINGH, J.

CM-2506-CII-2015

There is delay of 292 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 292 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 20.11.2013, passed by the learned Motor Accidents Claims Tribunal, Sonapat (hereinafter called the 'Tribunal'), vide which the claimants have been awarded compensation to the tune of Rs.4,08,000/- on account of death of Vikas in the motor vehicular accident which took place on 05.02.2012.

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

3. Learned counsel for the appellants-claimants contended that the income of the deceased has been taken to be on lower side by the learned Tribunal. The minimum wages in the year 2009 were more than 5300/- per month. He further contended that no future prospects have been awarded towards the income of the deceased. The multiplier has also been applied wrongly as per the age of the claimants. Less amount has been awarded towards funeral expenses and no amount has been awarded towards love and affection. Thus, he contended that the learned Tribunal has not awarded the just compensation.

4. On the other hand, Mr. Ravinder Arora, Advocate, learned counsel for the respondent No.2 contended that the income of the deceased has been rightly taken by the learned Tribunal. He further contended that the multiplier has also been rightly applied. Sufficient amount has been

awarded by the learned Tribunal under the other heads. Thus, he pleaded that the amount of compensation awarded by the learned Tribunal is just and appropriate.

5. I have duly considered the aforesaid contentions.

6. The claim petition has been filed by the parents, sister and brother of the deceased. The present accident has taken place on 05.02.2012. The learned Tribunal has determined the income of the deceased to be Rs.4500/- per month. As per the case of the appellants-claimants, the deceased was 19 years of age. He has passed 10+2 and was pursuing his course of Chartered Accountant. It is alleged that he also used to take tuitions. The appellants-claimants have not placed on file any documentary evidence to show that the deceased was pursuing the course of Chartered Accountant. However, the appellants-claimants have examined PW-3 Neelam, who deposed that her son was taking tuitions from deceased Vikas. The appellants-claimants have alleged that deceased used to earn Rs.12,000/- per month. The case of the claimants is not corroborated from any documentary evidence. However, as the deceased was an educated young man, he could have easily earned Rs.4500/- per month, the income determined by the learned Tribunal. The minimum wages referred by learned counsel for the appellants-claimants cannot be applied in this case as it is not the case of the appellants-claimants that the deceased was working as a labourer. The learned Tribunal has mentioned that the income of the deceased is to be considered at par with male casual labourer but actually he was not a labourer, even as per the case of the claimants. So,

there is nothing wrong in the income of the deceased being taken by the learned Tribunal at the rate of Rs.4500/- per month.

7. The learned Tribunal has committed mistake by not awarding the future prospects to the income of the deceased. The deceased was a young educated man. There was every possibility that he will rise in his career and his income would increase with the passage of time. As per the postmortem report, the age of the deceased was 20 years. So, keeping in view the age of the deceased, 50% of the income of the deceased shall be added towards the future prospects. The total income of the deceased comes to Rs.6750/- per month i.e. Rs.81,000/- per annum. The learned Tribunal has rightly deducted 50% income of the deceased towards his personal expenses. The remainder comes to Rs.40,500/-. The learned Tribunal has wrongly applied the multiplier of 14 keeping in view the age of the parents of the deceased. As per the law laid down by Hon'ble Apex court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the multiplier shall be applicable as per the age of the deceased. So, the compensation on account of loss of dependency comes to Rs.7,29,000/- (40,500 x 18).

8. The parents of the deceased shall be further entitled to a sum of Rs.1,00,000/- on account of loss of love and affection of their son. The learned Tribunal has already awarded Rs.25,000/- towards funeral expenses and Rs.5000/- towards loss to estate. Thus, the total amount of compensation comes to Rs.8,59,000/-.

9. Thus, keeping in view my aforesaid discussion, the present

appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.8,59,000/- from Rs.4,08,000/- 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 292 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.

18.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**