241.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1208-2015 (O&M)
Date of decision:07.02.2017

BIMLA AND ORS. .... Appellants

versus

GURNINDER SINGH @ LOGHRI AND ORS. .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. G.S. Sandhu, Advocate, for the appellants.

HARI PAL VERMA, J.

The appellants-claimants have filed the present appeal against the award dated 19.07.2011 passed by MACT, Patiala, whereby their claim petition under Section 166 of Motor Vehicles Act for grant of compensation, was accepted and the claimants were held entitled to compensation of ₹4,11,000/- along with interest @7.5% per annum from the date of filing of the claim petition till actual realization of the amount.

Briefly stated, on 24.07.2008 at about 5 PM, when the deceased-Hassan Mohammad alias Hussan, who was present before the Ahata and was running his *rehri* (handcart), respondent No.1, while driving car No.PB-01-6289 very rashly and negligently and on high speed, firstly struck against a motorcycle and then struck against the deceased, resulting grievous injuries on his person. The driver of the car ran away after leaving the car on the spot. The deceased was firstly taken to Civil Hospital, Samana from where, he was referred to PGI, Chandigarh and on 28.07.2008, he succumbed to the injuries.

The Tribunal applied 1/3rd for his personal expenses and assessed the dependency at ₹36,000/- per annum. Since the deceased, who was about 40 years of age, the Tribunal has applied a multiplier of 11 and while granting compensation under different heads, awarded compensation to the tune of ₹4,11,000/-.

Learned counsel for the appellant has argued that the income of the deceased was taken as ₹4,500/- per month, whereas the deceased was earning around ₹6,000/- per month. The Tribunal has committed further error in applying deduction of 1/3rd from the income of the deceased. The deduction should have been 1/4th instead of 1/3rd. Similarly, multiplier as 11 has been applied, which is on lower side. No compensation has been awarded on account of hospitalization as well as medical treatment of the deceased.

The award was passed on 19.07.2011 and the present appeal was filed on 02.12.2014. Along with the appeal, an application under Section 5 of Limitation Act read with Section 151 CPC for condonation of delay of 1142 days has been filed.

The only ground seeking condonation of delay is that the appellant No.1 is illiterate, whereas appellants No.2 to 4 were minor and were under the impression that if they file an appeal, then they cannot withdraw the amount of compensation. Since the appellants were in need of money, so under this bona fide impression, they had not filed the appeal which led to delay in filing the appeal.

I have heard learned counsel for the applicants-appellants.

The impugned award was passed on 19.07.2011 and the present appeal has been filed on 02.12.2014. Thus, there is an inordinate delay of 1142 days in filing the present appeal. The very reason for seeking condonation of delay is not sufficient to meet the requirements as provided under Section 5 of the Limitation Act. It has not been denied that they were not in the knowledge of the impugned award. Even the amount deposited in the FDRs in compliance of the direction issued by the Tribunal, was released vide order dated 28.02.2013 after attaining the age of majority by appellant No.4, and some of the amount of FDR was released on 25.09.2014. Thus, against the award dated 19.07.2011, the appeal was filed on 02.12.2014 and in this manner, delay of 1142 days has occurred.

Since the delay of 1142 days has not been sufficiently explained, therefore, the appeal is liable to be dismissed on the score of limitation itself.

Accordingly, application i.e. CM-3268-CII-2015 as well as appeal stand dismissed.

(HARI PAL VERMA)
JUDGE

07.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No