IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2283 of 2014(O&M)

Date of decision: 4.8.2017

Parminder Kumar and others …..Appellants

VERSUS

Charanjeet Singh @ Monti and another .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ishan Cooner, Advocate for
Mr. J.S. Cooner, Advocate for the appellants.

Mr. Lalit Garg, Advocate for respondent No.2.

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REKHA MITTAL, J. (Oral)

CM No.8224-CII of 2014

Prayer in this application is for condoning delay of 35 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Parminder Kumar, appellant No.1, the application is allowed and delay of 35 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.2283 of 2014

Counsel for the appellant would state that the insurance company has not been given any recovery right and the appeal has been filed by the claimants for enhancement, service of respondent No.1 may be dispensed with. Ordered accordingly.

The claimants are in appeal seeking enhancement of compensation awarded under Section 163-A of the Motor Vehicles Act, 1988 (in short ‘the Act’) by the Motor Accidents Claims Tribunal, Ambala (in short 'the Tribunal') in regard to death of Smt. Jagir Kaur @ Jagiro Devi in a motor vehicular accident that took place on 25.11.2012.

Counsel for the appellant has submitted that the Tribunal has assessed income of the deceased at Rs.3,200/- per month but deducted 1/3rd for personal and living expenses of the deceased, not permissible in law. Another submission made by counsel is that no compensation has been awarded for loss of love and affection to children of the deceased.

Counsel representing the insurance company would urge that as compensation has been assessed under Section 163-A of the Act, structured formula provided for in the Second Schedule appended to Section 163-A of the Act has been rightly applied by the Tribunal to assess compensation.

I have heard counsel for the parties, perused the paper-book particularly the award.

Be that as it may, it is an undisputed position of the case that application was filed under Section 163-A of the Act wherein compensation is to be assessed as provided for in the Second Schedule. The Tribunal has assessed income of the deceased at Rs.3,200/- per month being a housewife. As the deceased was a non-earning person, her income could be assessed at Rs.15,000/- per annum but once the Tribunal has assessed her income akin to an earning person, note underneath the table of Second Schedule permits deduction to the extent of 1/3rd for personal expenses. Even after making deduction, income would be more than Rs.15,000/- per annum. Under the circumstances, contention of the appellant assailing deduction of $1/3^{rd}$ is misconceived and liable to be rejected. There is no provision in the Second Schedule for awarding compensation for loss of love and affection. Appellants cannot assert any claim under Section 163-A as is admissible under Section 166 of the Act.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

AUGUST 4, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no