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

**FAO-4116-2014(O&M)  
Date of Decision :10.10.2017**

Chhoti and Another

.....Petitioners

Versus

Hem Chand and Others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Diwan S. Adlakha, Advocate  
for the appellants.

Mr. D.R.Bansal, Advocate  
for respondents No.1 & 2.

Mr. M.B.Jain, Advocate  
for respondent No.3.

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**AVNEESH JHINGAN, J. (ORAL)**

**CM No.12186-CII of 2014**

The present application has been filed for condonation of delay of 410 days in filing the appeal. The respondents No.1 to 3 have filed the reply to the application for condonation of delay. The unfortunate mother and minor sister lost a son/brother aged 18 years in a motor vehicular accident. From the perusal of the award, it is evident that claimants were not able to prove the income of the deceased. In the application a ground has been taken that the claimants were not having enough financial resources to engage a counsel for filing of the appeal. It was only in March 2014, when they got the awarded compensation then they collected the documents and engaged a counsel for filing the appeal. In all this a delay of 410 days occurred.

The present proceedings are under a welfare legislation. The delay appears to be bona fide as the claimants would not have gained anything by delaying the filing of the appeal.

The Hon'ble Apex Court in judgment reported as **N.Balakrishan vs. M.Krishnamurthy 1998(7) SCC 123** has held as under:-

*“ It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is no put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation.”*

The above decision is to the effect that if explanation does not smack mala fides the delay should be condoned. It is settled position of law that substantial justice should not be made to suffer when pitted against technicalities.

Keeping in view the facts and circumstances of the case and the explanation put forth the delay in filing the appeal is condoned.

Application stands disposed of accordingly.

**FAO-4116-2014**

Notice of motion.

At the asking of the Court, Mr. D.R.Bansal, Advocate accepts notice on behalf of respondents No.1 & 2 and Mr. M.B.Jain, Advocate accepts notice on behalf of respondent No.3. Since they had been supplied

paper book earlier, they are ready for arguments on merit.

The present appeal has been filed against the award dated 02.01.2013 passed by Motor Accident Claims Tribunal, Panchkula.

That on 05.11.2010, Harun aged 18 years was going on his Moped when a Tipper Truck bearing registration No. HP18-B-1904 hit Harun near Sector 25/26 of Panchkula. His head was crushed. FIR was lodged.

The mother and the minor sister of the deceased filed a claim petition under Section 166 of Motor Vehicles Act 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs.4,74,680/- along with interest at the rate of 6% per annum. The said amount included a sum of Rs.10,000/- for loss of estate and Rs.10,000/- for funeral expenses.

The present appeal has been filed for enhancement of the compensation.

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants contended that the amount awarded under the conventional heads is very meager. He further contended that no amount for loss of love and affection has been awarded by the Tribunal.

Learned counsel for the respondents argued that the amount awarded is sufficient and no enhancement is called for. They further argued that there was a delay in filing the appeal which would also effect their interest liability.

At this stage it would be appropriate to make reference to the decision of Hon'ble the Apex Court in *Asha Verman and others Vs.*

***Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held as under:

*“17. Further, the High Court has erred in awarding only Rs.5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award Rs.1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation**, 2014 (2) R.C.R.(Civil) 876: 2014 (3) Recent Apex Judgments (R.A.J.) 112: 2014 (5) SCALE 479, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors.**, 2013 (3) R.C.R. (Civil) 170; 2013(3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*

*18. Further, we award Rs.1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors.**, 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of Rs.50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd.**, 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.*

A perusal of the above decision shows that Hon'ble the Apex

Court has enhanced the compensation awarded by the High Court under the

Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love and affection to parents.

Hon'ble the Apex Court in ***Rajesh and others Versus Rajbir Singh and others***, 2013 (9) SCC 54, has held as under:

*“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”*

A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded and further need to be increased from time to time.

From the perusal of the above decisions it is evident that the appellants are entitled to compensation under various conventional heads and the amounts already awarded need to be enhanced. Keeping in view the fact that a mother had lost an 18 years old son and a minor sister had lost a young brother, the amounts awarded by the Tribunal are enhanced and the amount for loss of love and affection is given as per table given below:-

| <i>Sr. No.</i> | <i>Heads</i>                                                             | <i>Amount earlier awarded by the Tribunal</i> | <i>Now awarded</i> |
|----------------|--------------------------------------------------------------------------|-----------------------------------------------|--------------------|
| 1.             | Loss of dependency                                                       | Rs.4,54,680/-                                 | Rs.4,54,680/-      |
| 2.             | Funeral Expenses                                                         | Rs.10,000/-                                   | Rs.20,000/-        |
| 3.             | Loss of Estate                                                           | Rs.10,000/-                                   | Rs.25,000/-        |
| 4.             | Loss of love and affection to the mother and the sister of the deceased. | Not awarded                                   | Rs.1,00,000/-      |
|                | Total                                                                    | Rs.4,74,680/-                                 | Rs.5,99,680/-      |

The award dated 02.01.2013 is modified to the extent that amount awarded by the Tribunal of Rs.4,74,680/- is enhanced to Rs.5,99,680/- along with interest at the rate of 6% per annum from the filing of the present petition.

The appeal is partly allowed in the above terms.

(AVNEESH JHINGAN)  
JUDGE

October 10, 2017  
Sunil Devi

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No