

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

**FAO No.4144 of 2014 (O&M)
Decided on : 07.02.2017**

Firdosh and others

... Appellants

Versus

M/s Delhi Baroda Road Carriers Pvt. Ltd. and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Ashish Gupta, Advocate
for the appellants.

G.S. Sandhawalia, J. (Oral)

CM-12207-CII-2014

The present application has been filed for condonation of delay of 195 days in filing the appeal.

In view of the averments made in the application, supported by the affidavit, the delay of 195 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The claimants challenge the award dated 12.08.2013, whereby compensation of ₹8,54,280/- has been awarded on account of the death of Aakil Khan @ Ali Khan who was working as a driver with the respondent No.1-Transport Company, on 13.06.2011 and seek further enhancement.

It was the case of the claimants that he was drawing wages @ ₹12,000/- per month. The vehicle over turned in the area of Police Station Sinnar, District Nasik, Maharashtra and he was crushed under the truck and died. An FIR was also lodged regarding the said fact.

Since respondent No.1 had failed to put in appearance, he was proceeded against ex parte before the Commissioner who examined the evidence and came to the conclusion that the deceased was working as a driver and the accident arose in and out of the course of employment. The age of the deceased was taken as 27 years, in view of the Postmortem Report and his wages were held to be ₹8,000/- per month. The interest i.e. ₹2,22,113/- alongwith ₹5,000/- as funeral expenses and expenses ₹8,000/- totaling to ₹10,89,393/- were directed to be paid. The relevant factor was accordingly assessed as 213.57 and the compensation was assessed. In case the amount was not deposited within 60 days by the respondent No.2-company further interest @ 12% was to be paid. The Insurance Policy Ex.A-10 was taken into consideration to fix the liability upon the company, which covered the date of the accident, since it was valid from 21.02.2011 to 20.02.2012.

Keeping in view the fact that there was no clause in the Insurance Company that it was not liable to pay the interest, it was held that interest was also the liability of the Insurance Company.

Counsel for the appellants has argued that the deceased was drawing ₹12,000/- per month and, therefore, income assessed was on a lower side as only ₹8,000/- had been taken. However, nothing could be pointed from the record that the deceased was drawing the salary as stated, rather the Commissioner has noticed that Smt. Firdosh who had appeared as AW-1 had admitted that she had no proof regarding the employment and salary.

In such circumstances in the absence of any documentary evidence such as bank statement or salary certificate qua the amount of salary, which had been received by the deceased, this Court is of the opinion that the findings which have been recorded by the Commissioner as such that the salary was ₹8,000/- per month cannot said to be on the lower side.

Another argument which has now been raised is that the appellants were entitled for penalty. A perusal of the order would go on to show that show cause notice was also directed to be issued to respondent No.1 for penalty for not depositing the compensation within one month. It could not be pointed out that the said proceedings have culminated against the appellant.

In such circumstances, in the absence of any substantial question of law arising, there is no merit in the present appeal and the same is, accordingly, dismissed.

FEBRUARY 07, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No