IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
FAO No. 4827 of 2013 (O&M)
Decided on: 24.11.2017

Kuljit Kaur and Anr. .....Appellants

versus

Bhola Singh and Ors. .....Respondents

FAO No. 4828 of 2013 (O&M)

Balwinder Kaur and Anr. .....Appellants

versus

Bhola Singh and Ors. .....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. A.K. Sharma, Advocate
for the appellants.

Mr. V.K. Garg, Advocate
for respondent No.7-Insurance Company.

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RAJBIR SEHRAWAT, JUDGE (ORAL)

CM-20608-CII-2013 in FAO-4827-2013
CM-20610-CII-2013 in FAO-4828-2013

These are the applications for condonation of delay of 67 days in re-filing both the appeals

Both these appeals are arising from the same award and the reasons given in both the applications for condonation of delay are the same.

In view of the above and for the reasons mentioned in the applications, the delay in re-filing the appeals are condoned.

Both the CMs are allowed.

<u>CM-20607-CII-2013 in FAO-4827-2013</u>
<u>CM-20609-CII-2013 in FAO-4828-2013</u>

These are the applications for condonation of delay of 13 days and 15 days in filing the appeals.

Both these appeals are arising from the same award and the reasons given in both the applications for condonation of delay are the same.

In view of the above and for the reasons mentioned in the applications, the delay in filing the appeals are condoned.

Both the CMs are allowed.

<u>FAO No. 4827 of 2013</u>
<u>FAO No. 4828 of 2013</u>

The facts, common in both the cases are that; on 25.03.2012. Gurjit Singh along with Baljinder Singh, residents of village Chouhat, were coming from village Dhakrabba to village Chouhat, on motor cycle bearing registration No.PB-11-AC-5511, make Discover, driven by Gurjit Singh, at normal speed and on correct left hand side of the road . Baljinder Singh was the pillion rider. At about 6.30 p.m., when they reached Bus Adda of Village Chouhat, then Bus No.PB-11-AK-2995 of M/s Shiv Motors, driven by respondent No.1 rashly and negligently and without observing traffic rules, came from Patiala side and struck into the motor cycle. Both Gurjit Singh and Baljinder Singh fell down on the road. The bus dragged them to some distance, as a result of which, Gurjit Singh and Baljinder Singh received multiple and grievous injuries. Both of them died at the spot. The accident was witnessed by Lakhwinder Singh @ Lakhi, who lodged the FIR regarding the accident at Police Station Samana. On account of this accident the claim petitions were filed.

In the claim petition filed by the parents, from which, FAO No.4827 of 2013 is arising, it was claimed that their son Baljinder Singh was hale and hearty and he was a student of 8th Class. He was a brilliant student and only son of his parents. It was claimed that he used to contribute towards the family to the extent of Rs.2500/- per month. Accordingly, the claim petition was filed. In the other claim petition filed by the parents of Gurjit Singh, from which the FAO No.4828 of 2013 is arising, it was claimed that their son Gurjit Singh was a student of 10th Class and was a brilliant student. The deceased was the only son of his parents and he used to contribute towards the family to the extent of Rs.2500/- per month.

Parties led their evidence.

Although, the Tribunal passed two different awards, but the respondents in both the claim petitions were the same, and the award was also passed on the same date. Appreciating the evidence, the learned Tribunal, in both the cases, held the offending bus to be negligent in driving. The income of the deceased in both the cases was assessed to be Rs.15000/- per annum, the deceased being non-earning member. Out of this income a deduction of 1/3rd was made in both the cases on account of the personal expenses. Accordingly, in both the case the loss of dependency was assessed to be Rs.10,000/- per annum. Keeping in view, the age of parents, the multiplier of 15 was applied in both the cases. Accordingly, the loss of dependency in both the cases, separately, was assessed to be Rs.1,50,000/-. Beside this, in both the cases Rs.75,000/- each, as lump sum, was awarded on account of the future prospects of the deceased. Beside this, Rs.5000/- was awarded as funeral expenses in each case.

While arguing the case, learned counsel for the appellants has submitted that in the present case, the income of the deceased has been taken on extremely lower side. He has relied upon the judgment of the Hon'ble Supreme Court rendered in ***2013(4) RCR (Civil) 276*** titled as ***Krishan Gopal vs. Lala*** to contend that notional income of the deceased, who happened to be a student, is required to be taken at Rs.30,000/- per month. Still further, his submission is that since the deceased was a student, therefore, no deduction is required in the case, on account of the personal expenses. Still further, his submission is that, as per the latest judgment of the Hon'ble Supreme Court; an amount of Rs.15000/- is to be awarded on account of the funeral expenses.

On the other hand, learned counsel for the respondent-Insurance Company submits that the income of the deceased has rightly been assessed by the Tribunal. It is his submission that no enhancement is required in the present case. Still further, it is his submission that the future prospects awarded at Rs.75000/- in the present case comes to be 50% of the dependency, and therefore, the same is not sustainable.

Having heard the learned counsel for the parties and perusing the record, this Court is of the considered opinion that the argument raised by the learned counsel for the appellants in both the cases deserves to be sustained. Following the judgment of the Hon'ble Supreme Court in case of ***Krishan Gopal*** (supra), the income of the deceased in the present appeals is required be taken to be Rs.30,000/- per annum. Since, the deceased was only a student, therefore, no deduction is required to be made on account of the personal expenses, in view of the fact that it is only the notional labour contribution value of the deceased which is being taken by the Tribunal. Accordingly, the income of both the deceased in both the appeals is taken at Rs.30,000/- per annum. Multiplier of 15 is applied in both the cases.

Accordingly, the loss of income/dependency qua the claimants is assessed to be Rs.4,50,000/- in each appeal. Besides this, Rs.75000/- has rightly been awarded by the Tribunal on account of the future prospects. The arguments of the learned counsel for the respondent that it turns out to be 50% of the assessed income is not sustainable. The Tribunal has not awarded the future prospects as the percentage of income. It has been awarded only as a consolidate lump sum amount. The same is retained as such. Hence, Rs.75,000/- is awarded on account of future prospects. Still further, in terms of judgment of the Hon'ble Supreme Court in ***National Insurance Company vs. Pranay Sethi and Ors., 2017 ACJ 2700*** decided on ***31.10.2017***, the compensation awarded on account of the last rites is enhanced to Rs.15000/-.

In view of the above, in both the appeals, the amount of Rs.5,40,000/- each (4,50,000+75000+15000) is awarded as compensation. The award passed by the Motor Accident Claims Tribunal, to that extent, is modified.

The interest on the amount is retained at the same rate as was awarded by the Tribunal.

No other argument is raised.

In view of the above, the present appeals are allowed. The award of the Motor Accident claims Tribunal is modified in the above said terms.

24th November, 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No