In the High Court of Punjab and Haryana at Chandigarh

FAO- 4697 of 2014(O&M)
Date of Decision: 8.12.2017

Bashira Khan @ Rani and others

---Appellants

versus

Jagdish Lal @ Kalu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. D.S.Randhawa, Advocate
for the appellants

None for the insurance company

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Rekha Mittal, J.

CM No. 13280-CII of 2014

Prayer in this application is for condoning delay of 138 days in filing the appeal.

In view of averments made in the application coupled with the factum that provisions of the Motor Vehicles Act for grant of compensation are meant to enhance social justice and save the victim family from the financial loss caused due to accident, the application is allowed, delay of 138 days in filing the appeal stands condoned subject however, to the condition that in case the compensation is enhanced, the applicants-appellants shall not be entitled to interest for the period of delay.

Disposed of accordingly.

FAO- 4697 of 2014

The appellants are in appeal seeking enhancement of compensation in regard to death of Nazar Khan in a motor vehicular accident that took place on 12.3.2011.

The Motor Accidents Claims Tribunal, Patiala (in short “the Tribunal”) has assessed compensation to the tune of Rs. 5,86,000/-, detailed hereinbelow:-

Monthly income of the deceased	Rs. 6000/-
Deduction for personal expenses	1/3rd
Multiplier	12
Loss of dependency	4800 x12= Rs.5,76,000/-
Funeral expenses	Rs. 5,000/-
Loss of consortium	Rs. 5,000/-

Counsel for the appellants has submitted that income of the deceased assessed by the Tribunal is on lower side and liable to be enhanced. The multiplier and deduction for personal expenses allowed by the Tribunal need modification in the light of judgment of Hon'ble the Supreme Court of India **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**. Adequate compensation may be allowed under conventional heads in the light of judgment of the Constitution Bench of Hon'ble the Supreme Court of India in **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others decided on 31.10.2017)**. The claimants are entitled to benefit of increase in income for future prospects to the extent of 40% in the light of judgment in **Pranay Sethi and others' case (supra).**

There is no representation on behalf of the insurance company, earlier being represented by a counsel.

The plea of the claimants is that the deceased was working as Manager on a *dhaba* at salary of Rs. 15,000/- per month. The claimants examined Manjit Singh CW-2 to establish their plea in this regard. Manjit Singh tendered into evidence affidavit Ex. CW2/A and reiterated the version put forth by the claimants. He has failed to produce on record any document with regard to his income from *dhaba*, financial status or business of *dhaba* being carried on by him in order to establish that he was in a position to pay salary of Rs. 15,000/- per month to Nazar Khan. There is no evidence on record with regard to educational qualification of Nazar Khan. No doubt the Tribunal has an obligation to assess just and reasonable compensation but the Court cannot overlook that claimants generally have the tendency to inflate figures of income to justify more compensation. The Tribunal has assessed income of the deceased by treating him as a semi-skilled worker at the rate of Rs. 6000/- per month. There is no material on record justifying intervention in income assessed by the Tribunal.

The Tribunal has held that the deceased was in the age bracket of 31 to 35 years. Though the Tribunal has noticed judgment of Hon'ble the Supreme Court of India in **Smt.Sarla Verma and others' case (supra)** but still has committed error by applying less multiplier and more deduction for personal expenses. In view of number of claimants and age of the deceased, admissible deduction for personal expenses would be $1/4^{th}$ and multiplier as 16. As the deceased was less then 40 years of age, claimant shall be entitled to increase in income for future prospects to the extent of 40%. In this manner, loss of dependency comes to Rs. 4500 x 12 x 16 =8,64,000 +3,45,600 (40%)=**Rs.12,09,600/-**.

The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to widow	**Rs. 40,000/-**

Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to **Rs. 12,79,600/-** and the additional amount is **Rs. 6,93,600/-**(12,79,600-5,86,000). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 138 days, payable to widow and minor children of the deceased in equal proportion. The amount falling to share of the minors shall be deposited in fixed deposit receipts till they attain the age of majority or for a period of three years whichever is later.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

8.12.2017
PARAMJIT

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