

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

**FAO No.6423 of 2016(O&M)
Date of Decision-19.12.2017**

Himkanti Misra and another ... Appellants

Versus

Ajay Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. I.S. Vimal, Advocate
for the appellants.

Mr. R.N. Singhal, Advocate
for respondent No.4.

RAJ MOHAN SINGH, J.

[1]. This appeal has arisen from MACT No.148 of 1988 which was filed on account of death of Nirja Misra student of 5th class who was 10 years of age at the time of accident. Her father A.K. Misra was employed as Assistant in the University of Delhi and her mother was employed as Telephone Operator.

[2]. Connected appeal i.e. FAO No.605 of 1991 titled Priyanka @ Sonia Kalra Vs. Ajay Kumar and others has already been decided by the Co-ordinate Bench of this Court vide order dated 25.02.2011 in which Insurance Company has been made liable to answer the claim of the claimants. A single award was passed in respect of four claims arising out of a single accident, therefore, one appeal was filed, impugning the award in respect of claim petitions i.e. MACT Nos.147 and 148 of 1988.

Maintainability of single appeal was doubted. Therefore, FAO

No.764 of 1991 was pressed for the claim arising out of MACT No.147 of 1988 and the present appeal i.e. FAO No.6423 of 2016 was filed for the claim arising out of MACT No.148 of 1988. In this way, delay of 9374 days has occurred in processing the appeal in the wrong Forum.

[3]. Learned counsel for the appellants has pressed into service judgment of the Hon'ble Apex Court in **Premier Tyres Limited Vs. Kerala State Road Transport Corporation, 1993 AIR (SC) 1202** and contended that the ratio of aforesaid judgment would apply in case of passing of the decree by the Court. Since in the claim petitions, decree has not been passed by the Tribunal, therefore, ratio of the aforesaid judgment would not apply in the context of filing two appeals. However, for all abundant caution, second appeal was filed. Even otherwise, remedy availed by the appellants in pursuing the common appeal on earlier occasion would entitle the appellants to seek benefit of availing remedy in the wrong Forum and the period spent during the proceedings has to be excluded in view of Section 14 of the Limitation Act.

[4]. Learned counsel further submitted that the requirement of filing separate appeals would arise only if separate decree was drawn by the Tribunal. Since there was no decree drawn by the Tribunal, therefore, there was no requirement of filing the separate appeal, but for the reasons as

indicated above, the present appeal was filed along with the application for condonation of delay of 9375 days in filing the appeal. The delay was not intentional. Connected appeal i.e. FAO No.605 of 1991 has already been decided.

[5]. Maintainability of single appeal in respect of two claims was not debated in the said appeal. However, in view of two remaining cases, separate appeal i.e. FAO No.764 of 1991 arising out of MACT No.147 of 1988 has been decided vide order of the even date.

[6]. Taking into consideration the totality of facts and circumstances of the case, I deem it appropriate to condone the delay of 9374 days in filing the appeal. Application i.e. CM No.21476-CII of 2016 stands disposed of.

[7]. The Motor Accident Claims Tribunal, Jalandhar (for short 'the Tribunal') has assessed total compensation to the tune of Rs.76,800/- along with interest @ 12 % per annum from the date of filing of the claim petition till final realization of the amount. The Tribunal has assessed an amount of Rs.400/- per month i.e. Rs.4800/- per year towards financial loss and loss of love and affection of the mother and a multiplier of 16 was applied to that amount and in this way, total amount of compensation to the tune of Rs.76,800/- was calculated.

[8]. Keeping in view the age of the deceased and in view of ratio laid down in **Kishan Gopal and others Vs. Lala and**

others, 2013(4) RCR (Civil) 276, the notional income of the deceased can be assessed to be Rs.30,000/- per year to which a multiplier of 15 can be applied and an amount of Rs.50,000/- can be added towards loss of love and affection. After due calculation, the amount of compensation would come out to be Rs.5,00,000/- (30,000X15+50,000=5,00,000/-). The Executing Tribunal shall work out the remaining compensation to be payable to the claimants along with interest. The enhanced compensation payable to the claimants shall carry interest @ 9% per annum from the date of filing of the claim petition till final realization of the amount.

[9]. With the aforesaid modification, the present appeal is disposed of.

(RAJ MOHAN SINGH)
JUDGE

19.12.2017

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No