

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No. 8569 of 2015 (O&M)

Date of decision: 26.09.2017

Kavita and Ors.

...Appellants

Versus

Tushar Jandu and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Saneta, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for respondent No. 3.

AVNEESH JHINGAN, J. (ORAL)

Present appeal has been filed against the award dated 03.05.2014 passed by the Motor Accident Claims Tribunal, Jhajjar (for short, 'The Tribunal').

The appeal was filed after delay of 374 days. An application under Section 5 of the Limitation Act, for condonation of delay has been filed. The said application is supported by the affidavit. The deceased who was serving as constable with Haryana Police was survived by a widow and two minor children. The explanation put forth in the application is that in August, 2015, the applicants were advised by the counsel that on filing the appeal, compensation can be enhanced. They collected the papers and borrowed the money from relatives to file the appeal.

Learned counsel for the respondents could not raise any serious objection for the condonation of delay.

The Hon'ble Apex Court has time and again has held that a liberal approach should be adopted with regard to condonation of delay. In

the present case the appeal has been filed under a welfare legislation and claimants include two minor children, in such circumstances, the delay in filing the appeal is condoned.

Appeal has been filed for enhancement of compensation as awarded by the Tribunal. The brief facts relevant for deciding the present appeal are that Sanjay Kumar aged 30 years who was constable in Haryana Police lost his life on 27.01.2012 in an accident. He was on his duty at police barrier on Bhakhra Canal near village Abbub Shahar, District Sirsa. While he was on duty a Car bearing registration No. RJ-14UB-6672(for short 'offending vehicle') came from Kala Titar side of the canal path at a very high speed. Sanjay Kumar gave signal by torch to stop. The offending vehicle was being driven rashly and negligently at a very high speed. The Car struck against Sanjay Kumar, as a result the Car and Sanjay Kumar fell into the canal and other members of the checking party suffered injuries. Sanjay Kumar died due to injury sustained in the accident.

A claim petition under Section 166 of the Motor Vehicles Act, 1988(for short, 'The Act') was filed by the widow and two minor children. The Tribunal awarded a sum of ₹27,40,000/- along with interest @ 8% per annum. The amount awarded includes ₹ 27,000/- awarded for loss of consortium and love and affection.

I have heard learned counsel for the parties and perused the paper book and record. The facts have not been disputed by either of the party.

The only issue raised in the present appeal is that a consolidated sum of ₹ 27,000/- awarded by the Tribunal for loss of consortium and for loss of love and affection is very meager.

Learned counsel for the appellants argued that this amount of ₹ 27,000/- awarded is on the lower side and same should be enhanced. Learned counsel for the respondents has argued that the Tribunal has already awarded ₹27,40,000/- as compensation and hence no further enhancement is called for.

The contention raised by learned counsel for the appellants deserves acceptance, in view of the law laid down by the Hon'ble the Apex Court in case of **Smt. Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767**, wherein it has been held as under:

*“17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹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, ₹ 25,000/- towards funeral expenses and ₹ 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 ₹ 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 ₹ 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.

From the above decision it is clear that the Tribunal should have awarded just and equitable amount under the conventional heads for loss of love and affection and loss of consortium. Keeping in view the facts of the case that deceased was survived by widow and two minor children and the law laid down by the Hon'ble Apex Court the amount of ₹ 27,000/- awarded is enhanced to ₹ 1,50,000/- i.e. ₹ 1,00,000/- for loss of love and affection and ₹ 50,000/- for loss of consortium.

The award dated 03.05.2014 is modified to the extent that amount awarded of ₹27,40,000/- is enhanced to ₹ 28,63,000/-.

The claimants shall be entitled to the enhanced amount along with interest @ 6% per annum from the date of filing of claim petition till realization of the amount.

The appeal is partly allowed and disposed of accordingly.

September 26, 2017

Poonam (II)

**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned:

Yes

Whether reportable:

Yes