In the High Court of Punjab and Haryana at Chandigarh

CM-27408-CII-2014 in/and
Cross Objections No. 232-CII-2014 in/and
F.A.O No. 4760 of 2013
Date of Decision: 12.12.2017

Leelawati and others ......Appellants

Versus

Ram Singh and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Goyat, Advocate
for the appellants.

Mr. Sushil Bhardwaj, Advocate
for respondents No. 1 and 2/cross-objectors.

Mr. Suvir Dewan, Advocate
for respondent No. 3.

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ANITA CHAUDHRY, J

CM-27408-CII-2014

The cross objections have been filed with the delay of 111 days.

Both the sides have been heard.

Counsel for the cross-objectors urges that notice of the appeal had been received on 1.7.2014 but the cross-objections could not be preferred as the cross-objectors could not arrange the funds and therefore, delay of 111 days occurred and the delay was not deliberate.

The submission on the other hand is that the cross-objections are by the owner of the bus and the funds are not so large and only a Court fee of Rs. 21/- had to be affixed and a false plea had been taken. It was urged that there have to be sufficient reasons to condone the delay and the provisions are mandatory and the cross-objections can be filed within 30 days from the date of service.

Hon'ble Supreme Court in ***P.K. Ramachandran versus State of Karala and another AIR 1998 SC 2276*** has held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

The cross-objections are treated as a separate appeal and if the delay is to be condoned, sufficient reasons have to be given. The plea taken for condoning the delay are not sufficient. Therefore, delay cannot be condoned.

The application as well as the cross objections are dismissed.

F.A.O No. 4760 of 2013

Amar Nath was 39 years old at the time of accident on 14.12.2011. He was a Hawker and used to sell newspapers. On the fateful day, he entered a bus to sell newspapers and while getting down he fell and the tyre went over him and he died. The Tribunal took the income of Amar Nath as Rs. 4,000/- and calculated the compensation at Rs. 5,20,000/- which included Rs. 20,000/- for loss of consortium and Rs. 20,000/- for funeral expenses.

The submission on behalf of the appellants is that the minimum wages in 2011 were Rs. 4643/- and as per ***National Insurance Company Limited versus Pranay Sethi and others, SLP (Civil) No. 25590 of 2014, decided on 31.10.2017***, an addition towards future prospects of 40% should be added and some amount be also granted for love and affection. The counsel further submits that recovery rights were given to the insurance company as the deceased was not a passenger in the bus and was taken as gratuitous passenger.

The submission on behalf of the insurance company is that the claimants had admitted that the deceased had entered the bus to sell the newspapers and was not travelling in the bus and he had not purchased any ticket and therefore, he was taken as a gratuitous passenger and the Tribunal had rightly allowed recovery rights.

The counsel for the owner-driver urges that the deceased was a passenger and he was in the process of alighting and the owner had paid the premium for the number of passengers being carried in the bus and there is no evidence from the side of the claimants or the insurance company that the number of passengers were over the maximum limit.

Responding to this submission, counsel for the insurance company submits that there was an admission by the claimants that the deceased was not travelling as a passenger as he had not bought any ticket and was a hawker and therefore, no premium was paid for his travel and he would not be called a passenger.

The deceased was a hawker. He used to sell newspapers. He was working at a shop which was close to the spot. The witnesses examined by the claimants have stated that the deceased was alighting from the bus when he fell and the rear tyre went over him. The respondents owner and driver did not lead any evidence to show that the deceased was a passenger or had purchased any ticket for travel on that bus, therefore that argument has to be rejected. The deceased was a gratuitous passenger, therefore, recovery rights were rightly allowed to the insurance company.

Now coming to the quantum, the minimum wages in 2011 were Rs. 4643/- per month and an addition of 40% has to be made as per ***Pranay Sethi's*** case (supra). Therefore, taking the income at Rs. 4643/-, the addition would be Rs. 1857/-. The total income would be Rs. 4653 + 1857 = Rs. 6500/-. After deducting 1/3rd towards personal expenses, the amount available for the family would be Rs. 4334/- and the compensation would be Rs. 4334/- x 12 x 15 = 7,80,120/-. To this a sum of Rs. 40,000/- is allowed for loss of consortium, Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate which raises the total to Rs. 8,50,120/-

The Tribunal had allowed Rs. 5,20,000/- which would be deducted and the remaining amount i.e. Rs. 3,30,120/- would be payable with interest @ 6% from from the date of filing of the appeal till the amount is actually paid firstly by the insurance company then they can recover it from the owner-driver.

FAO-4760-2013 is partly allowed.

(ANITA CHAUDHRY)
JUDGE

December 12, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes

Gurpreet Singh Bhatia
2017.12.16 15:20
I attest to the accuracy and authenticity of this document
Chandigarh