IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.110 of 2007(O&M)
Date of Order:26.03.2018

National Insurance Company Limited

..Appellant

Versus

Jasvir Kaur and others

..Respondents

(2) FAO NO.1121 of 2014 (O&M)

Jasvir Kaur and others

...Appellants

Versus

Raghav Satyam Tulsi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.C.Kapoor, Advocate,
for the appellant (in FAO No.110 of 2007)

Mr. Naveen Sharma(Moudgil), Advocate,
for the appellants (in FAO NO.1121 of 2014)

ANIL KSHETARPAL, J(Oral)

C.M.No.3702-CII of 2014

Allowed as prayed for.

C.M.No.3703-CII of 2014

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record.

C.M.No.3704-CII of 2014

Prayer in this application is for condonation of delay of 2617 days in filing the appeal.

The appellants were claimants before the Motor Accident

Claims Tribunal who had lost their bread earner in a motor vehicular accident, which took place on 22.11.2004. Although, delay is huge, however, taking into consideration the fact that the Insurance Company has also filed appeal against the same judgment, which is pending in this Court. This court is of the opinion that the claimants should not be denied the benefit of appropriate compensation solely on the ground of delay. This court in the judgment reported as ***Smt. Sunita Devi and others v. Union of India and others, 2016(3) RCR (Civil), 904*** has taken a view that in an appeal filed by the claimants-appellants, the delay should be liberally condoned. However, the interest for the period of delay should be denied to the claimants. Similar view has been reiterated in ***Poonam Rani and otehrs v. Baldev Singh and others, 2017(5) RCR(Civil), 238***.

Respectfully following the aforesaid view, the delay of 2617 in filing the appeal is condoned.

MAIN

With the consent of learned counsel for the parties, both the appeals have been taken on Board and arguments have been finally heard.

Gurpal Singh, had died in a motor vehicular accident on 22.11.2004. He was 35 years and 10 months old at that time. He had left behind a widow and two minor daughters. He was working as a Technician in a Semi Conductor Complex Limited, drawing total salary of Rs.13,435.70/- per month. His carry home salary was Rs.12,195.77/-. Learned Tribunal has worked out the dependency after taking carry home salary minus 1/3rd expenses for himself.

Learned counsel for the claimants-appellants has submitted that the salary for the purpose of calculating dependency is to be taken as

Rs.13,435/- and not carry home salary i.e. Rs.12195/-. He has further submitted that the amount has not been increased on account of future prospectus. He relied upon the judgment passed by the Constitution Bench passed in ***National Insurance Company Limited vs. Pranay Sethi and others, JT 2017(10) SC 450***, to contend that income should be increased by 40%. He has further submitted that even under the conventional heads, total amount of Rs.4500(i.e. Rs.2500/- on account of funeral expenses and Rs.2000/- for loss of estate/consortium) has been awarded. He has further submitted that under the conventional heads, Rs.70,000/- was required to be awarded.

On the other hand, learned counsel for the Insurance Company-appellant in FAO No.110 of 2017, has submitted that the accident took place in the year 2004 and the learned Tribunal had awarded correct compensation. He has submitted that the multiplier applied by the court is in accordance with the judgment passed by the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and Another, (2009) 6 SCC, 121.***

Taking into consideration the arguments of learned counsel for the parties, this court is of the opinion that the learned Tribunal committed an error in calculating the dependency while considering the carry home salary, which should have been on the basis of the gross salary. Since the deceased would have grown in his employment, the court ought to have granted some amount for future prospects. Even under conventional heads, the amount awarded is meager. Hence the compensation is re-worked as under:-

Heads	***Compensation awarded by High Court***	***Compensation awarded by MACT***
Income Taken Dependency Annual Dependency	Rs.13435/- -1/3rd (Rs.4478) Rs.8957/- Rs.8957x12=1,07,484/-	Rs.12195/- -1/3rd (Rs.4065) Rs.8130/- Rs.8130x12=97,560/-
+ future prospects Total salary after adding future prospects	+40% =42,994/- Rs.1,50,478/-	NIL
Multiplier of 16	Rs.1,50,478x16=24,07,648/-	Rs.15,36,000/-
Conventional Heads -Loss of estate -Funeral Expenses -Consortium	 Rs.15000/- Rs.15000/- Rs.40000/- ------------- Rs.70,000/-	 Rs.2500/-(Estate/consortium) Rs.2000/- NIL -------------- Rs.4500/-
    Enhanced amount	Rs.24,77,648/-(**Total Already awarded by MACT)** Rs.15,40,500/-(**less-already awarded by MACT)** Rs.9,37,148/-	Rs.15,40,500/-

In view of the aforesaid, FAO No.1121 of 2014 is allowed, whereas FAO No.110 of 2007 is dismissed. The enhanced amount shall carry interest @ 7.5% from the date of filing of the claim petition till its realization. However, as noticed while condoning delay, claimants shall not be entitled to interest for 2617 days.

March 26, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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