

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

FAO No.587 of 2009 (O&M)

Date of decision: 12.07.2018

SANTOSH ETC.

... Appellants

VS.

SHAMSHER AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Madan Sandhu, Advocate
for the applicants-appellants.

Mr. Ram Avtar, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

CM-26555-56-CII-2016

There is delay of 2648 days in filing the application for recalling of order dated 17.07.2009 whereby appeal preferred by claimants for enhancement of compensation was dismissed for non-prosecution.

Counsel for the applicants-appellants would contend that a serious prejudice shall be caused to the applicants in case order dated 17.07.2009 is not recalled and the appeal is not heard on merits. He has further submitted that the applicants are ready to forgo interest for the period of delay of 2648 days in case the application for recall of order dated 17.07.2009 is allowed and the appeal is restored and heard on merits resulting in enhancement of compensation.

The insurance company has not filed any response to the application, therefore, there is no counter to the averments raised in the applications. This apart, the provisions of Motor Vehicles Act, 1988 dealing with compensation are enacted with avowed object to make good the loss, the victim family has suffered. In view of the above, the applications are allowed. Delay of 2648 days in filing the application for restoration is condoned and so also the application for recalling of order dated 17.07.2009 is allowed, subject however, to the condition that the applicants-appellants shall not be entitled to interest for the period of 2648 days in case they are eventually successful in the appeal qua enhancement of compensation. The appeal (FAO No.587 of 2009) is restored to its original number and stage.

**CM No.2071-CII of 2009 in/and
FAO No.587 of 2009**

Heard.

Allowed as prayed for. Delay of 12 days in filing the appeal stands condoned.

The claimants are in appeal seeking enhancement of compensation on account of death of Parvinder @ Sanju in a motor vehicular accident that took place on 30.09.2006.

The Tribunal has awarded compensation of Rs.3,06,000/-, detailed hereunder:-

- | | |
|-----------------------------------|-----------|
| 1. Monthly income of the deceased | Rs.3000/- |
| 2. Monthly dependency | Rs.1500/- |

3. Multiplier	17
4. Loss of dependency	Rs.3,06,000/-

The plea of the claimants is that the deceased was working as a machine operator in a factory at salary of Rs.6000/- per month. They produced salary certificate Ex.P3. The Tribunal refused to rely upon the salary certificate for want of the claimants having examined a witness to prove the same, in accordance with law. I do not find any reasons to differ with findings of the Tribunal in this regard.

The Tribunal has assessed income of the deceased at Rs.3000/- per month. When the case is examined in the light of minimum wage available at the relevant time, there is no justification for enhancement of income of the deceased. The Tribunal has rightly deducted 50% towards personal expenses as the deceased was unmarried son of claimants Santosh Devi and Satbir Singh. However, claimants shall be entitled to benefit of addition in income for future prospects @ 40%. The admissible multiplier, on the basis of age of the deceased (20 years), would be 18. In this manner, loss of dependency is calculated at Rs.4,53,600/- [(Rs.3000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss to estate.

Total compensation is Rs.4,83,600/- and the additional amount is Rs.1,77,600/- (4,83,600 – 3,06,000), payable with interest @ 7.5% per

annum from the date of petition till realization, except for the period of delay of 2648 days in filing the application for recalling the order dated 17.07.2009, payable to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

12.07.2018
ashok

(REKHA MITTAL)
JUDGE

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