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

FAO No.1219 of 2007 (O&M)

Date of decision: September 13, 2018

Amit Saini

.....Appellant

Versus

Dalip Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Saurabh Kapoor, Advocate for the appellant.

Mr. R.C. Gupta, Advocate for respondent No.3.

Mr. R.M. Suri, Advocate for respondent No.5.

A.B. CHAUDHARI, J (Oral)

The appellant in the present appeal has put to challenge judgment dated 30.07.1994 passed by the Motor Accident Claims Tribunal, Karnal (for short 'Tribunal'), in M.A.C.T. Case No.145 of 1992, in the matter of award of compensation.

2. In support of the appeal, learned counsel for the appellant vehemently argued that the appellant is raising a single issue regarding the award of compensation, namely that the Tribunal applied multiple of 13 rather than applying the multiplier of 17, and therefore, the said mistake is required to be corrected in the present appeal. He then submitted that the Tribunal did not award any compensation for funeral expenses.

3. *Per contra*, learned counsel for the respondents opposed the appeal. There is a common ground raised by the respondents that the appeal has been filed after almost 12 years, though, the delay was

condoned and the reason for the delay was that the appellant was minor at the time of filing of the claim petition. Nevertheless, according to the learned counsel for the respondents, appellant was represented before the Tribunal through his natural guardian-mother and therefore, in the absence of any claim about family on the part of the guardian to take proper care of the interest of the minor, the appeal would not be maintainable.

4. It was also submitted by the learned counsel for the respondents that the enhancement of compensation, if at all made, cannot be made applicable to the mother and daughter of the deceased and the benefit, if at all, could be given to the appellant-Amit Saini alone and none else as the mother and daughter have not preferred any appeal in this Court. Learned counsel for the appellant has replied the said objection and submitted that the part of delay has been taken care of by the judgment of the Apex Court and another single judge judgment of this Court. The respondents have also relied on the judgment of this Court refusing to grant any interest for the period for delay in filing the appeal.

5. Upon hearing the learned counsel for the rival parties, I make the following points for determination:-

- (i) Whether multiplier of 17 in place of multiplier of 13 applied by the Tribunal should be applied?
- (ii) Whether the appellant-Amit Saini alone would be entitled to the relief of enhanced compensation as a sequel to the answer given to point No.(i) of determination, though, mother and daughter are made proforma-respondents No.6 and 7, in the present appeal?

- (iii) Whether the appellant and respondents No.6 and 7, i.e. mother and daughter, would be entitled to the relief as to point No.(i)?

6. Upon hearing the learned counsel for the rival parties and looking to the settled law, I am of the view that, though, the learned counsel for the appellant claimed that multiplier of 18 should have been applied, the multiplier of 17 needs to be applied in the present case. Therefore, the finding recorded by the trial Court, in Para 18 of the impugned judgment applying multiplier of 13, is set aside and multiplier of 17 is applied. Accordingly, the point No.(i) of determination is answered in the affirmative.

7. It is not dispute that the appellant-Amit Saini was minor at the time when the claim petition was filed and upon attaining the majority, he filed the appeal being aggrieved by the award of less compensation as stated above. However, respondents No.6 and 7, i.e. mother and daughter are proforma-respondents, in the present appeal. The appellate Court's power is an extension of the power of the lower Court and the appellate Court is entitled to grant of relief as appeal is continuation of original proceedings. In that view of the matter, since respondents No.6 and 7 are parties to the present appeal, who are mother and daughter of the appellant-Amit Saini, they would be entitled to grant of relief as the case is one of the enhancement of compensation amongst the legal heirs of dependents of the deceased. The analogy can be drawn from the partition suits where proforma-respondents are made respondents, but then while deciding the appeal, the appellate Court is bound to refix the share not only of the appellants, but also all the

respondents who are proforma-respondents who did not prefer appeal. I am, therefore, of the firm opinion that the relief can also be given in the present appeal, not only to the appellant, but also to respondents No.6 and 7. Interest of justice requires that the appellant as well as proforma-respondents No.6 and 7 should be granted the relief. As a sequel, points No.(ii) and (iii) of determination are answered in the affirmative.

8. Learned counsel for the appellant has cited the decision in the case of Prerna (Smt.) & another versus M.P. State Road Transport Corporation and others, (1993) 1 SCC 621. We quote the following portion from Paras 3 & 5 of the said judgment, which read thus:-

“3. The claimants went in appeal against the award of the tribunal. The Corporation also filed an appeal against the judgment of the tribunal. By a common judgment dated October 9, 1984 the High Court dismissed both the appeals. The High Court, however, enhanced the interest awarded to the claimants from 6 per cent to 9 per cent. This appeal is by the widow and the minor daughter for enhancement of compensation. Narayan, father of the deceased has also been impleaded as proforma respondent.

4. x x x x

5. Keeping in view all the facts and circumstances of the case it would be just and proper to allow 24 years multiplier. We, therefore, award Rs.86,000 as compensation to the three claimants. They shall also be entitled to interest at 12 per cent from the date of application before the tribunal. Since the compensation is being enhanced by this Court after about 15 years of the accident, there is no question of making any deductions on any score. We further direct that the sum of Rs.86,000 shall

be apportioned by paying Rs.40,000 to the minor daughter Shweta, Rs.30,000 to Prerna, widow of the deceased and Rs.16,000 to Narayan the father of the deceased.”

9. In the light of the aforesaid judgment, I am inclined not to make any deduction for the same reason. In the result, following order is passed:-

ORDER

- (i) **FAO No.1219 of 2007** is partly allowed;
- (ii) In place of application of multiplier of 13, the same is substituted by multiplier of 17 and the executing Court shall accordingly, modify the order of compensation, as stated in Para-18 of the impugned judgment, and cause making of payment accordingly, with the same interest and apportionment as stated in the impugned judgment, between the appellant and proforma-respondents No.6 and 7;
- (iii) In addition, funeral expenses in the sum of ₹5,000/- shall also be paid to the appellant and proforma respondents No.6 and 7 in the same proportion;
- (iv) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

September 13, 2018

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Whether speaking/ reasoned: **No**

Whether Reportable: **No**