IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 **FAO-10241-2014**

Date of Decision:06.03.2018

Andul Gani and others **.....Appellants**

Versus

Aslam Khan @ Aslam and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Ashish Gupta, Advocate, for the appellants.

Mr. Arun Sharma, Advocate for Mr. T.K. Joshi, Advocate, for respondent No.2-Insurance Company.

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<u>HARI PAL VERMA, J.(Oral)</u>

<u>CM-28213-CII-2014</u>

This is an application under Section 5 of the Limitation Act for condonation of 643 days' delay in filing the appeal.

Learned counsel for the appellants submits that the claimants/appellants were under the impression that the appeal shall be filed against the impugned award when they will get the compensation. But when they met their counsel in the last week of September, 2014, then they came to know that the delay has occurred in filing the appeal. Thereafter, they arranged the funds and approached their counsel. He had handed over a copy of the impugned award to the appellants to file an appeal. Thus, the present appeal was filed and the delay of 643 days has occurred.

Learned counsel for respondent No.2-Insurance Company submits that appellants have not been able to show sufficient cause, so as to condone the inordinate delay. However, he submits that the appellants-claimants be not granted interest for the said period in the event of condoning the delay.

The pleaded case of the appellants is that they were under the impression that the appeal can be filed after the disbursement of compensation, and it is for this reason the delay has occurred. The Act is a beneficial piece of legislation. Therefore, for the reasons stated in the application, same is allowed and the delay of 643 days in filing the appeal is condoned.

<u>FAO-10241-2014</u>

The appellants-claimants have filed the present appeal seeking enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Nuh (for short “the Tribunal”) vide award dated 02.11.2012.

As per claim-petition filed under Section 166 of the Motor Vehicles Act 1988, on 17.03.2011, deceased Hamidi along with her nephew Sahid was going to her house from the fields. At about 8.00 P.M., when they were standing to cross the road, a truck bearing registration No.RJ-02-GA-0232 being driven by its driver in a rash and negligent manner was coming from the wrong side. It ran over Hamidi. Due to this accident, Hamidi died at the spot and respondent No.1 fled away from the place of occurrence leaving the offending truck there.

The claimants have filed a claim-petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Hamidi, aged about 40 years in the road side accident, which took place on

17.03.2011. Considering Hamidi to be a house-wife, the Tribunal has assessed the notional income of the deceased as ₹3,000/- per month and accordingly awarded a total compensation of ₹3,46,000/- along with interest @ 6% per annum from the date of institution of the claim-petition till its realization to the claimants.

Aggrieved against the award dated 02.11.2012, the appellants-claimants have filed the present appeal seeking enhancement of compensation on account of death of Hamidi.

Learned counsel for the appellants has argued that deceased Hamidi was about 40 years of age and she was a house-wife and used to do manual work. The Tribunal has assessed the notional income of the deceased as ₹3,000/- per month, whereas the minimum wages at the relevant time were ₹4,500/- per month. Since the claimants could not prove the fact that the deceased was working as a labourer, the Tribunal has assessed the income as ₹3,000/- per month. The income so assessed by the Tribunal is absolutely on premises as the deceased was a housewife and was rendering domestic services. A house-wife is required to perform many duties and as held by the Hon'ble Apex Court in the case of **Lata Wadhwa Versus State of Bihar, 2014 (4) R.C.R. (Civil) 673**, the claimants should have been awarded higher compensation while considering the notional income of the deceased. He has further argued that considering the age of the deceased as 40 years, the Tribunal was required to apply multiplier 15 instead of 14. Similarly, as the income of the deceased was assessed on notional basis, no deductions were required to be effected.

On the other hand, learned counsel for respondent No.2-Insurance Company has argued that adequate compensation has already been granted to the claimants and since the claimants have failed to establish the fact that the deceased was working as a labourer, the Tribunal has assessed the income of the deceased as ₹3,000/- per month on notional basis.

I have heard the learned counsel for the parties.

Admittedly, Hamidi had died in a road side accident, which took place on 17.03.2011 when the offending truck was coming from the wrong side and it ran over the deceased. Apart from the fact that she was a housewife, the claimants have claimed compensation considering the deceased as a labourer. But as no evidence has been brought on record that she was working as a labourer, the Tribunal has assessed the compensation by treating the deceased as a housewife. She was 40 years of age at the time of death, therefore, the Tribunal was required to apply multiplier 15 instead of 14. Similarly, contribution of a housewife towards her family cannot be undermined. The deceased was rendering domestic services, therefore, this Court finds that the contribution of a housewife should not be undermined and should not be considered less than the minimum wages as prescribed by the authorities from time to time.

Accordingly, this Court finds that taking into consideration the contribution of a housewife, the Tribunal should have assessed the notional income of the deceased as ₹4,500/- per month. This Court has considered the role and contribution of a housewife in **FAO No.976-2017 (IFFCO TOKIO General Insurance Company Limited Versus Narinder Singh and others)**, decided on 14.02.2017 and observed as under:-

"So far as the contention of the learned counsel for the appellant-Insurance Company that the calculated monthly income of the deceased is on the higher side and

> *is even more than a daily wager is concerned, it cannot be accepted. We cannot equate a housewife with a domestic servant. What a housewife can perform, such services can never be performed by a domestic servant. She not only takes care of all the requirements of her husband, children and other family members by preparing food, washing clothes etc. but she is a person who is available for 24 hours to all the family members. In this manner, a domestic servant/maidservant cannot be a substitute for a wife or a mother to render selfless services to her husband and children."*

Accordingly, this Court finds that while taking into consideration the minimum notional income of the deceased as ₹4,500/- per month and applying the multiplier 15, loss of dependency comes to ₹8,10,000/-. The claimants are also held entitled compensation under the conventional heads. Since the compensation is being assessed on the basis of notional income of the deceased, the claimants are not entitled for addition under the head of future prospects.

Accordingly, this Court finds that the claimants are held entitled to compensation in the following manner:-

Monthly income	:	₹4,500
Annual income	:	₹54,000/-
Total loss of dependency (₹54,000 x 15)	:	₹8,10,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Loss of consortium	:	₹40,000/-
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Total amount of compensation	:	₹8,80,000/-
Amount already awarded	:	₹3,46000/-
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Enhanced amount	:	₹5,34,000/-

The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of claim-petition till its realization.

Since the appeal has been filed after a delay of 643 days, the appellants-claimants shall not be entitled to interest for that period.

With the aforesaid modification in the award, the present appeal stands disposed of.

March 06, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No