IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **FAO-2239-2013 (O&M)**

Date of Decision:04.04.2018

Kirshna Devi and others **.....Appellants**

Versus

Jai Singh and others **.....Respondents**

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

Present: Mr. Raj Kumar Rana, Advocate, for the appellants.

None for respondent Nos.1 and 2.

Mr. D.K. Prajapati, Advocate for Mr. R.S. Madan, Advocate, for respondent No.3.

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HARI PAL VERMA, J.(Oral)

CM-10674-CII-2013

Prayer in this application is for condonation of 47 days' delay in re-filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 47 days in re-filing the appeal, is condoned.

CM-10675-CII-2013

This is an application under Section 5 of the Limitation Act for condonation of 645 days' delay in filing the appeal.

Learned counsel for the appellants states that the applicants are unfortunate claimants, who have lost their sole bread earner. They are very poor and have no source of income. Therefore, they could not afford to engage counsel and the counsel appearing in the trial court assured them that he would himself engage a counsel. On his assurance, they signed the relevant papers in the month of December, 2010 and handed over to him. In the month of October, 2012, it was told that since the applicants had not paid the fee, no appeal had been filed and the papers are still lying in the office of lawyer. Accordingly, the applicants collected the paper and filed the appeal on 16.11.2012 but forget to attach index 'B' containing court fee with the appeal. Thus, the present appeal was filed and the delay of 645 days has occurred.

Learned counsel for respondent No.3-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 should not be granted interest for the said period in the event the delay is condoned.

The pleaded case of the appellants is that they could not afford to engage counsel 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 645 days in filing the appeal is condoned.

FAO-2239-2013

Appellants-claimants have filed the present appeal seeking enhancement of compensation over and above the amount awarded by learned Motor Accident Claims Tribunal, Patiala (for short “the Tribunal”) vide award dated 28.10.2010.

In a claim-petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of death of Shiv Kumar alias Shankar, who died in a motor vehicular accident, which took place on 25.10.2008, the Tribunal has awarded a total compensation of ₹4,58,000/- along with interest @ 6% from the date of filing the claim-petition till its realization.

As per the claim-petition, on 25.10.2008, Shiv Kumar @ Shankar (since deceased) was going from his village Kheri Gandian to Rakhra near Nabha on his new motorcycle for which registration was applied for at a normal speed. Sohan Lal and Raj Kumar were following him on a separate vehicle being driven by Sohan Lal. At about 9.15 PM, when they had reached within the area of village Dhadhera, Tehsil and District Patiala, on Patiala-Nabha road, in the meantime, the offending truck bearing registration No.PB-11P-5293 being driven by its driver came from the opposite side in a rash and negligent manner without using any dipper, without blowing any horn and in zigzag manner. On seeking the offending vehicle, deceased-Shiv Kumar @ Shankar and Sohan Lal took their respective vehicles on the left side of the road. The offending vehicle struck against the motorcycle of deceased-Shiv Kumar @ Shankar. As a result thereof, Shiv Kumar @ Shankar fell down on the road side. When Sohan Lal and Raj Kumar were caring injured-Shiv Kumar @ Shankar, the driver fled away from the place of occurrence after leaving the offending vehicle there. Shiv Kumar @ Shankar died at the spot on account of injuries so suffered by him in the accident.

Not satisfied with the aforesaid amount of compensation, the appellants-claimants have preferred the present appeal seeking enhancement of compensation.

The accident and liability are not in dispute. What is in dispute is the quantum of compensation awardable to the claimants.

Learned counsel for the appellants has argued that at the time of accident, deceased-Shiv Kumar @ Shankar was about 44 years of age, though he was working as a Vaid but he was not drawing regular salary. Even if the wages of an unskilled worker are taken into consideration, the compensation is liable to be enhanced. Deceased-Shiv Kumar @ Shankar had died leaving behind a widow, a son aged around 20 years and three daughters in the age group between 11 years to 18 years. Thus, he left behind five dependents and therefore, the Tribunal was required to make $1/4^{th}$ deductions instead of $1/3^{rd}$ deductions. Similarly, as held by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009,** the claimants are held entitled to future prospects @ 25% of the income of the deceased and the amount awardable under the conventional heads.

On the other hand, learned counsel for respondent No.3-Insurance Company has argued that since the deceased was not a regular employee, his income had rightly been assessed being an unskilled worker. He has further argued that adequate compensation has already been granted and multiplier 14 has been applied considering the age of the deceased, therefore, there is no further scope for any enhancement of compensation.

I have heard the learned counsel for the parties.

In a motor vehicular accident, which took place on 25.10.2008, deceased-Shiv Kumar @ Shankar had died. He was working as a Vaid. He had left behind five persons, who were dependents on him. In view of the judgment in **Pranay Sethi's case(supra)**, the claimants are held entitled to an addition of 25% under the head of future prospects. Similarly, the Tribunal has awarded an amount of ₹5,000/- each on account of funeral expenses and loss of consortium, which is not in consonance with the law laid down in **<u>Pranay Sethi's case(supra).</u>**

The arguments raised by ld. counsel for the appellant qua 1/4th deduction towards the personal expenses of the deceased carries weight. At the time of filing of claim petition, appellant No.2-Pardeep Kumar, son of deceased was 20 years whereas appellant No.3-Sonia Rani, daughter of deceased was 18 years of age. Both were unmarried. Insurance company has not led any evidence that they are having any independent source of income. As such, the Tribunal has erred in holding that they are not dependent upon the deceased. Accordingly, finding of the Tribunal to this effect are set aside and appellants No.2 and 3 are held dependent upon the deceased. Since there are 5 dependent upon the deceased, in view of law laid down by Hon'ble Apex Court in **<u>Smt. Sarla Verma and others Versus Delhi Transport Corporation and another</u>, 2009(6) SCC 121,** the deductions towards the personal expenses of the deceased are required to be made as 1/4th instead of 1/3rd applied by the Tribunal.

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

Monthly income	:	₹4,000/-
Future prospects (25%)	:	₹1,000/-
Total monthly income	:	₹5,000/-
Annual income	:	₹60,000/-
Deductions (1/4th)	:	₹45,000/-
Total loss of dependency (₹45,000/- x 14)	:	₹6,30,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Loss of consortium	:	₹40,000/-

Total amount of compensation	:	₹7,00,000/-
Amount already awarded	:	₹4,58,000/-
Enhanced amount	:	₹2,42,000/-

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 692 days, the claimants shall not be entitled to interest for the period for which the appeal was delayed.

Out of the total amount of ₹7,00,000/-, the appellant No.1 (widow of deceased) shall be paid ₹3,00,000/-, whereas the remaining amount shall be paid to the appellant Nos.2 to 5 in equal share.

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

April 04, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

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