

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

FAO No.2000 of 2014 (O&M)

Date of Decision: 15.10.2018

Surjit Kaur and others

... Appellants

Versus

Harjit Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Chandandeep Singh, Advocate and
Mr. Harsh Vardhan Shehrawat, Amicus Curiae,
for the appellants.

Mr. Ramandeep Singh, Advocate,
for respondent No.1.

Mr. R.S.Madan, Advocate,
for respondent No.4-Insurance Company.

TEJINDER SINGH DHINDSA, J.(ORAL)
CM No.7234-CII of 2014

Instant application has been filed under Section 5 of the
Limitation Act seeking condonation of delay of 378 days that has
occurred in filing the main appeal.

Notice in the application had been issued by this Court
as far back as on 22.08.2014.

No reply to the application has been filed.

In view of the averments made in the application and
coupled with the statement made by counsel representing the
appellants that in the eventuality of this Court accepting the prayer
for enhancement of compensation in the main appeal, the period of
delay be excluded while calculating interest, prayer is allowed.

Delay is condoned.

Application disposed of.

Main appeal

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act was filed before the Motor Accident Claims Tribunal, Ludhiana seeking compensation to the tune of Rs.75 lakhs on account of death of Ajmer Singh in a motor vehicle accident that took place on 07.02.2011.

Claimants were the widow, daughter, minor son and aged mother of the deceased.

It was asserted in the claim petition that while Ajmer Singh (deceased) along with his son Palwinder Singh were proceeding on a motorcycle on 07.02.2011 then at about 8:00 p.m. they were struck by a Tata vehicle bearing registration No. PB-10-CR-2562 being driven by respondent No.1 Harjit Singh. Ajmer Singh as also Palwinder Singh are stated to have suffered grievous injuries in the accident and to which both succumbed on the same very day.

FIR No.38 dated 07.02.2011 was registered under Sections 279, 304-A and 427 IPC at Police Station Payal against the driver of the offending vehicle.

Claim petition having been contested, the following issues were framed by the Tribunal:-

- 1) ***“Whether death of Ajmer Singh was caused by respondent No.1 by driving TATA 1109 bearing no. PB-10CR-2562 in a rash and negligent***

manner on 07.02.2011 at about 8:00 PM in the area of village Barmalipur, Near DFL Factory? OPA

- 2) Whether respondent No.1 was not holding valid and effective driving license at the time of alleged accident? OPR-3***
- 3) Whether the respondent No.2 was not having valid vehicular documents of the offending vehicle at the time of accident? OPR-3***
- 4) Whether claimants are entitled to the compensation? If so, to what extent and from whom? OPA***
- 5) Relief."***

Insofar as issue No.1 is concerned, findings have been recorded by the Tribunal vide award dated 03.08.2012 holding that the death of Ajmer Singh occurred on account of injuries suffered in an accident that took place on 07.02.2011 involving the offending/insured vehicle and which was being driven in a rash and negligent manner by the driver/respondent No.1.

Insofar as computing the compensation amount, the monthly income of the deceased has been assessed as Rs.3,000/- per month. 1/4th deduction has been made towards personal and living expenses of the deceased and a multiplier of 13 has been applied to the multiplicand. An amount of Rs.10,000/- has been awarded towards loss of consortium, Rs.5,000/- as loss of estate and a like amount of Rs.5,000/- towards funeral expenses. The total compensation amount awarded by the Tribunal is Rs.3,71,000/- along with interest @ 6% per annum from the date of filing of the claim petition till actual realization. The liability with regard to compensation amount has been held to be joint and several.

Since the only issue raised in the present appeal is with

regard to quantum of compensation, I have heard counsel for the appellants as also learned counsel representing the contesting respondent Insurance Company.

This Court finds sufficient merit in the contention raised by counsel for the appellants that the monthly income of the deceased assessed at Rs.3000/- per month is much on the lower side. Even though the claimants had asserted that Ajmer Singh (since deceased) was earning Rs.75,000/- per month by doing agricultural work as also running a dairy farm but no cogent and credible evidence had been adduced to substantiate such plea. Under such circumstances, the Tribunal ought to have been guided by the minimum wages admissible to an unskilled worker as on the date of accident. It has gone uncontroverted that as on 07.02.2011 i.e. date of accident as per Notification issued by the competent state authority, the minimum wages admissible to a daily wager were Rs.4016/- per month. Be that as it may the minimum wages would only serve as a guiding factor. Keeping in view the fact that the deceased was looking after a family comprising his wife, daughter, son as also aged mother, it would be safe to presume that Ajmer Singh was earning a minimum of Rs.4500/- per month in the year 2011 to sustain a family of such size. Accordingly, for purposes of calculating the compensation amount, the monthly income of the deceased Ajmer Singh would be taken as Rs.4500/-.

Counsel for the appellants has contended that the Tribunal ought to have applied the multiplier by taking into

account the age of the deceased not to that of the claimant. Even though such submission is meritorious but it would be of no consequence inasmuch as the age of the deceased has been taken as 46 years as on the date of the accident as per post-mortem report (Ex. P-8). Even if the age of the deceased was to be taken into reckoning for applying the multiplier, it would still be the same as 13 by applying the parameters laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77.

This Court finds that the Tribunal has completely overlooked the aspect with regard to the addition in income towards future prospects. It was the case of the claimants themselves that the deceased was self-employed. Under such circumstances and by keeping in view his age bracket as on the date of accident, 25% addition in income is granted towards future prospects by following the dictum laid down by the ***Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Even the amount of Rs.20,000/- awarded by the Tribunal under the conventional heads would now stand enhanced to Rs.70,000/- i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and the like amount of Rs.15,000/- towards funeral expenses by following the judgment in ***Pranay Sethi's case (supra).***

In view of the above, the compensation amount is re-

assessed and calculated as follows:-

Sr. No.	Head	Calculation
1	Income Rs.4500/- p.m.	Rs.4500/-
2	Addition in income @ 25% towards future prospects	4500+1125=Rs.5625/-
3	1/4 th deduction towards personal and living expenses of the deceased	Rs.5625-1406=4219/- Rs.4219 x 12=50628/-
4	Compensation after applying multiplier of 13	Rs.50,628 x 13=6,58,164/-
5	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.6,58,164 +70,000= Rs.7,28,164/-

The afore calculated enhanced compensation amount be released in favour of the claimants along with interest @ 6% from the date of filing of the claim petition till actual realization.

It is clarified that while calculating the interest component, the delay period of 378 days towards filing the main appeal would be excluded.

The apportionment amongst the claimants as directed by the Tribunal would stay intact.

Appeal is allowed in the aforesaid terms.

15.10.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No