

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

FAO No.2012 of 2014 (O&M)
Date of decision: 17.04.2018

Sonia and ors.

... Appellants

versus

Mangal Singh & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. K.S.Dhanora, Advocate
for the appellants.

Mr. R.C.Gupta, Advocate
for Insurance Company.

Hari Pal Verma, J.(Oral)

CM No.7242-CII of 2014

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 159 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 159 days in filing the instant appeal is condoned.

FAO No.2012 of 2014

The appellants have filed the present appeal seeking enhancement of compensation over and above the amount awarded by the Motor Accident Claims Tribunal, Kurukshetra (in short 'the Tribunal') vide award dated 01.05.2013.

The appellants had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Surinder Kumar, aged about 39 years, in a motor vehicular accident,

which took place on 18.06.2012. The Tribunal, after considering all aspects awarded a total compensation of Rs.7,15,600/- along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

There are seven claimants in the claim petition which include widow, three minor daughters, one minor son and the old parents. The deceased Surinder Kumar was working as a driver of the truck bearing registration No.HR-56A-0786. On 18.06.2012 when after having dinner, Surinder Kumar (since deceased) was sleeping on a cot in front of Shiv Vaishno Hotel, Manoharpur at 12.05 am the offending canter bearing registration No.HR-56-7490 being driven by Mangal Singh - respondent No.1 came from the side of Jind at a very fast speed and in a rash and negligent manner. The offending vehicle struck against the cot of Surinder Kumar and as a result thereof, Surinder Kumar suffered multiple serious and grievous injuries and succumbed to his injuries at the spot. For this accident, FIR No.123 dated 19.06.2012 under Sections 279 and 304-A IPC was registered at Police Station Sadar, Jind against respondent No.1. Though claimants had examined Ishwar Chand, owner of the truck as PW-1, who stated that deceased was earning Rs.8,000/- per month, but the evidence of this witness was not accepted by the Tribunal as he was a member of M/s Swastic Handmade Paper PCIS Ltd., Ladwa, a Cooperative Society, who must be maintaining a balance sheet but the balance sheet or income tax return were not brought on record to show that they were giving salary of Rs.8,000/- per month to the deceased. However, the Tribunal considered the income of the deceased as Rs.5,600/- per month according to the prevailing minimum wages at the relevant time.

Not satisfied with the aforesaid compensation, the claimants

have filed the present appeal.

Learned counsel for the appellants has argued that the deceased Surinder Kumar was aged about 39 years at the time of accident and PW-1 Ishwar Chand deposed before the Tribunal that the deceased was getting salary of Rs.8,000/- per month. As the deceased was 39 years of age, the claimants are entitled to addition of 40% towards future prospects and Rs.70,000/- under conventional heads as held by the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi, 2017 SCC 270***. He further argued that as the deceased was of 39 years of age, the Tribunal should have applied the multiplier of 15 instead of 14 as held in ***Sarla Verma and ors. vs. Delhi Transport Corp. and anr., 2009(6) SCC 121***.

On the other hand, learned counsel for the insurance company has argued that adequate compensation has already been awarded to the claimants as they have failed to prove the income of the deceased. However, he fairly accepts that Rs.70,000/- should be awarded under conventional heads.

I have heard learned counsel for the parties.

The death of Surinder Kumar in the accident is not in dispute. The deceased was 39 years of age and therefore, it is not in dispute that as held in the case of *Salra Verma (supra)*, the multiplier of 15 should have been applied instead of 14. The deceased has left behind a widow, three minor daughters, one minor son and old parents. The father of the deceased cannot be held to be a dependent and this Court finds that 1/4th deduction has rightly been made. As the deceased was of 39 years, an addition of 40% towards future prospects should be made. Similarly, this Court finds that claimants are entitled to an amount of Rs.70,000/- under conventional

heads. With the assistance of parties, this Court finds that the claimants are entitled to compensation in the following manner:

<i>Heads</i>		<i>Calculation</i>
Monthly income		Rs.5,600/-
Future Prospects 40%		Rs.2,240/-
Total monthly income (monthly income + future prospects)		Rs.7,840/-
Annual income (Total monthly income x 12)		Rs.94,080/-
Deductions toward personal expenses of deceased	1/4	
Annual dependency		Rs.70,560/-
Multiplier	15	
Total loss of dependency		Rs.10,58,400/-
<u>Conventional heads</u>		
Loss of estate	:	Rs.15,000/-
Funeral expenses	:	Rs.15,000/-
Loss of consortium	:	Rs.40,000/-
Total amount of compensation		Rs.11,28,400/-
Amount already awarded		Rs.7,15,600/-
Total enhancement		Rs.4,12,800/-

Thus, the claimants are entitled to enhanced compensation of Rs.4,12,800/- over and above the amount awarded by the Tribunal. The claimants are also entitled to interest @ 7.5% per annum on the enhanced compensation from the date of filing of claim petition till its realization.

Since the appeal has been filed after a delay of 159 days in filing the appeal, the appellants shall not be entitled to the interest for the period during which the present appeal remained barred by limitation.

With this modification, the appeal is disposed of.

17.04.2018
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(HARI PAL VERMA)
JUDGE

1. Whether speaking/non-speaking?
2. Whether reportable?
- Yes/No
- Yes/No