IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CM No.5055-CII of 2015 in/and
FAO No. 1713 of 2015 (O&M)
Date of Decision : 03.10.2018

Bal Kishan and another

..... Appellants

Versus

Akbaruddin and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

***

Present : Mr. Rajinder Kumar, Advocate for
Mr. M.S.Tewatia, Advocate
for the applicants-appellants.

Mr. D.R.Bansal, Advocate
for the respondent-insurance company.

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AJAY TEWARI, J. (Oral)

CM No.5055-CII of 2015

For the reasons recorded, the application is allowed. Delay of 15 days in re-filing the appeal is condoned.

FAO No. 1713 of 2015

This is an appeal for enhancement of compensation and for modifying the award dated 28.08.2014 passed by the Motor Accident Claims Tribunal, Palwal granting compensation of Rs.4,13,000/- and interest @ 9% per annum in favour of the appellants and against the respondents.

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The brief facts of the case are that on 04.05.2013 the deceased-Parveen along with his father had to go to Delhi to purchase some lathe material. Vijay S/o Mohan Lal gave lift to his father on his bicycle to help him in boarding a bus for Delhi, whereas deceased Parveen was on his separate bicycle. However, when they reached at Leekhi Chowk, a truck bearing registration No.HR-38N-8250 driven by respondent No.1 in a rash and negligent manner, hit him from front side. As a result of which he sustained grievous injuries and succumbed thereto on the spot. Claim petition was filed. The Tribunal held that the accident had been caused by the rash and negligent driving of the respondent No.1 and ordered the compensation as mentioned above.

I find that the income of Rs.4,500/- per month is too low. Wages for a skilled labourer as per the minimum wages prescribed at that relevant time in Haryana were Rs.4,967/- per month say Rs.5,000/-. Consequently, income is taken to be Rs.5,000/-. He has further argued that in view of the judgment passed in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** 40% had to be awarded on account of future prospects. Counsel for the respondent-insurance company is not in a position to deny this. I find this to be indeed so and it is held that 40% has to be awarded towards future prospects.

Counsel for the appellants further states that in view of the judgment of the Supreme Court in the matter of ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*** the multiplier of 18 had to be applied instead of 16. Counsel for the respondent-insurance company is not in a position to deny this also. It is

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held that multiplier of 18 has to be applied instead of 16.

Further counsel for the appellants has argued that the Tribunal has awarded Rs.35,000/- under conventional heads and as per the judgment passed in ***Sureshchandra Bagmal Doshi & anr. Vs. The New India Assurance Company Limited & ors, 2018(2) RCR (Civil) 841 and Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018,*** the mother had to be granted Rs.40,000/- for filial consortium. I find this to be indeed so. Consequently, I grant Rs.35,000/- more under conventional heads.

Learned counsel for the respondent-insurance company, however, points out that once the deceased was unmarried, the deduction had to be half. I find it to be correct. Ordered accordingly.

Counsel for the appellants states that interest @9% per annum has been awarded whereas in ***Magma General Insurance Company Ltd. (supra),*** the Supreme Court had awarded interest @12% per annum. In the circumstances, the entire compensation would carry interest @ 12% from the date of filing of claim petition till the date/s of payment.

Counsel for the respondent-insurance company has, however, argued that in this case the appeal was dismissed in default and an application for restoration was filed after 541 days of delay and prays that for this period of 541 days, no interest should be charged from the insurance company.

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Counsel for the claimants-appellants has, however, argued that delay has been condoned subject to payment of costs of Rs.5,000/-.

In my opinion, even if the delay was condoned subject to costs yet that would not completely erode the argument of the insurance company regarding non-payment of interest for the period of 541 days' delay. The principle I have followed consistently in considering the issue of delay by claimants is that since now no limitation is prescribed for filing the claim application and interest is awarded from the date of filing the claim petition, I use the same principle for appeals and consequently condone the delay with the rider that the claimants would not be entitled for interest during the period of delay. On the same analogy, here is a case where the appeal was dismissed in default and then for either the fault of the claimants or the fault of their agent, there was a delay in moving an application for restoration. In the considered opinion of this Court, the insurance company cannot be burdened with interest for this period of delay. Ordered accordingly.

The entire enhanced amount would go to appellant No.2.

Appeal is allowed in the above terms and the award is modified accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No

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