

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

FAO No.2388 of 2014 (O&M)

Date of Decision: 15.10.2018

Surjit Kaur

... Appellant

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 appellant.

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.8578-CII of 2014

Instant application has been filed under Section 5 of the
Limitation Act seeking condonation of delay of 402 days that has
occurred in filing the main appeal.

Notice in the application had been issued by this Court
as far back as on 27.10.2014.

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
appellant 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 claimant's appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.5 lakhs on account of death of Palwinder Singh in a motor vehicle accident that took place on 07.02.2011.

Claimant was the mother of the deceased.

It was asserted in the claim petition that while Ajmer Singh along with his son Palwinder Singh (deceased) 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 Palwinder 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 claimant is 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 Palwinder 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 the compensation amount is concerned, the Tribunal has noticed the age of the deceased to be 13 years and has assessed the notional income of the deceased as Rs.15,000/- per annum. The age of the claimant i.e. mother of the deceased has taken into reckoning and multiplier of 13 has been applied. Rs.5000/- has been awarded towards loss of estate and the like amount of Rs.5000/- as funeral expenses. The total compensation amount awarded by the Tribunal vide award dated 03.08.2012 is Rs.2,05,000/- to be payable along with interest @ 6% from the date of filing of the claim petition till actual realization. The liability to

pay 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 appellant as also learned counsel representing the contesting respondent Insurance Company.

In the considered view of this Court, the compensation amount awarded by the Tribunal would have to be revisited and re-assessed.

The Apex Court in ***Kishan Gopal Vs. Lala and others 2013 (4) RCR (Civil) 276*** had considered the aspect of quantum of compensation pertaining to the death of a 10 year old boy. The notional income of the deceased in ***Kishan Gopal's case (supra)*** had been assessed to be Rs.30,000/- per annum. It was an accident that had taken place in the year 1992. The accident in the facts and circumstances of the present case concededly took place on 07.02.2011.

Keeping in view the inflationary trend, rising prices and increase in the cost of living during the period from 1992 to 2011, annual income of the deceased can be safely assessed as Rs.40,000/- per annum.

In the considered view of this Court, the Tribunal has erred in applying the multiplier on the basis of age of the claimant i.e. mother of the deceased. As per dictum laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***, the multiplier ought to have been applied by taking into account the age of deceased. Accordingly, it is

directed that multiplier of 18 be applied to the multiplicand.

Even as regards the conventional heads, the amount of Rs.10,000/- awarded by the Tribunal would now stand enhanced to Rs.30,000/- i.e. Rs. 15,000/- towards loss of estate and Rs.15,000/- for funeral expenses.

In view of the above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1	Income Rs.40,000/- per annum	Rs.40,000/-
2	Compensation after applying multiplier of 18	Rs.40,000 x 18=7,20,000/-
3	Conventional Heads: loss of estate and funeral expenses	Rs.30,000/-
	Total	Rs.7,20,000+30,000= Rs.7,50,000/-

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

It is, however, clarified that while calculating interest component, the period of delay in filing the main appeal i.e. 402 days would stand excluded.

Appeal is allowed in the aforesaid terms.

15.10.2018

vandana

Whether speaking/reasoned

Whether Reportable

(TEJINDER SINGH DHINDSA)

JUDGE

Yes

No