IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2777 of 2015 (O&M)
Date of decision: 30.07.2018.

Sumitra and others

...Appellants

Versus

Rakesh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Lalit Kumar, Advocate for
Mr. Johan Kumar, Advocate for the appellants.
None for respondents No.1 and 2.

Ms. Sonal Datta, Advocate for respondent No.3.

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LISA GILL, J.

CM No.8556-CII of 2015

This is an application seeking condonation of delay of 966 days in filing the appeal.

Learned counsel for the applicants/appellants submits that the applicants are not aware of the remedy available against the impugned award. It is contended that delay of 966 days in filing this appeal is not intentional or willful but due to the reason mentioned above. The applicant has nothing to gain by delay in filing of this appeal. The applicants, it is submitted, undertake not to claim any interest for the delayed period in case of any relief being granted to them.

Learned counsel for respondent No.3 opposes this application while submitting that no cogent explanation is forthcoming for condonation of this colossal delay in filing the appeal.

Heard learned counsel for the parties.

In view of the facts mentioned in the application as well as the arguments addressed, it is considered just and expedient to decide the case of the applicant/appellant on merits rather than dismiss it on technical considerations of delay in filing the appeal.

Accordingly, the delay of 966 days in filing the main appeal is condoned.

Application is disposed of.

FAO No.2777 of 2015

The appellants/claimants have filed this appeal for enhancement of the compensation awarded to them by learned Motor Accident Claims Tribunal, Palwal (`Tribunal' for short) on account of death of Hari Singh.

Claimants who are the widow, a married daughter and two minor sons of the daughter of deceased-Hari Singh filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of the death of Hari Singh in a motor vehicle accident which took place on 04.5.2009. FIR No.150 dated 04.05.2009 under Sections 279/304A/427 IPC was registered against respondent No.1. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of offending Qualis bearing registration No. DL-3CS-4340 by respondent No.1–Rakesh. There is no challenge to the finding of the learned Tribunal in this respect and the same has attained finality.

The learned Tribunal awarded a sum of Rs.1,00,000/- as compensation to the claimants vide impugned award dated 20.03.2012. The deceased was admittedly 72 years old at the time of the accident. His income was assessed as Rs.3,000/- per month. Deduction of 50% on account of personal expenses was effected. Multiplier of 5 was applied. Rs.10,000/-

were awarded on account of loss of consortium, loss of estate and funeral expenses.

Learned counsel for the appellant submits that income of the deceased has wrongly been assessed at Rs.3000/- per month, whereas the deceased was a retired teacher from Education Department, Haryana. Moreover, though daughter of the deceased was married but being a widow, she alongwith her two minor children were dependent upon the deceased. It is thus argued that deduction of 50% has wrongly been effected as the widow, married daughter and her minor children were dependent upon the deceased. Therefore, compensation awarded is on the lower side. Moreover, a meagre amount of Rs.10,000/- has been awarded under the conventional heads. It is, thus, prayed that the compensation be enhanced.

Learned counsel for the Insurance Company while refuting the above facts, submits that there is not even an iota of evidence on record to show that the deceased was an employee of Education Department, Haryana. It is not disputed that the minimum wages of an unskilled labourer in the State of Haryana was Rs.3840/- at the time of accident in 2009. It is further submitted that there is nothing on record to show that the married daughter and her children were dependent upon the deceased.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no doubt that except the bald statement of PW2 Sumitra, there is nothing on record to prove that the deceased was an employee of Education Department of Haryana. No document to this effect has been produced on record. However, learned Tribunal has erred in assessing the income of the deceased less than that of an unskilled labourer. Keeping in view the facts and circumstances, income of the deceased is assessed as Rs.3,840/- per month. As per the guidelines of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680***, no increase in the income on account of loss of future prospects is to be afforded as the deceased was admittedly 72 years of age at the time of the accident.

Learned counsel for the appellants is unable to point out any evidence on record which reveals that the daughter of the deceased and her children were dependent upon the deceased. PW2 Sumitra in her testimony before the Tribunal admitted that she was living with her two sons. Her daughter had unfortunately lost her husband 13 years prior to the accident. No evidence has been led to prove that the said daughter of the deceased along with her children was living with the deceased or was dependant on him. Learned Tribunal has rightly held that deduction of 50% is to be effected in this case. Multiplier of 5 has been correctly applied.

However, in view of the guidelines laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680*** the amount of Rs.10,000/- awarded under the conventional heads needs to be enhanced. Appellant No.1 is, thus, entitled to the amount of compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	3840/- p.m. i.e. Rs.46,080/- per annum
2.	Income after deduction of 50% on account of personal expenses	46,080–23,040/- = 23,040/-
3.	Total dependancy after applying a multiplier of 5	(23,040/-**x**5)= Rs.1,15,200/-
4.	Loss of estate	Rs.15,000/-

5.	Loss of consortium	Rs.40,000/-
6.	Funeral expenses	Rs.15,000/-
	Grand Total	Rs.1,85,200/-

The amount of compensation already awarded to appellant No.1, needless to say, shall stand deducted from the amount calculated as above. Appellant No.1 is thus entitled to compensation of Rs.1,85,200/- instead of Rs.1,00,000/- with interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization. It is, however, made clear that in terms of the undertaking recorded while condoning the delay in filing this appeal, appellant No.1 is not entitled to interest for the period of delay in filing the appeal.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(LISA GILL)
JUDGE

July 30, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No