

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

FAO-5368-2014 (O&M)

Date of Decision:26.03.2018

Krishan Chand and others

.....Appellants

Versus

Harpreet Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Ms. Gurdeep Kaur, Advocate for
Mr. Sandeep K. Sharma, Advocate,
for the appellants.**

**Mr. V.K. Garg, Advocate,
for respondent No.3-Insurance Company.**

HARI PAL VERMA, J.(Oral)

CM-14985-CII-2014

This is an application under Section 5 of the Limitation Act for condonation of 450 days' delay in filing the appeal.

Learned counsel for the appellants submits that appellant No.1 who was pursuing the claim petition, was in the Armed Forces and was posted in J&K. After the decision of the claim petition, he failed to take recourse of further remedy of appeal for enhancement of the amount of compensation as he was not aware in this regard. Moreover, appellant No.3 was minor at the time of filing the appeal whereas appellant No.2 was 18 years old but they were not well versed with the law and its procedure. In the 4th week of March, 2014, when the appellants went to Mohali Court to

file a complaint for claiming damages of the scooter in the said accident,

then their counsel asked them as to why have they not filed an appeal for enhancement of compensation and suggested them to pursue the said remedy instead of filing complaint. Thereafter, they approached their counsel. Thus, the present appeal was filed and the delay of 450 days has occurred.

Learned counsel for respondent No.3-Insurance Company submits that appellants have not been able to show sufficient cause, so as to condone the inordinate delay. However, he submits that the appellants-claimants should not be granted interest for the said period in the event the delay is condoned.

The pleaded case of the appellants is that they were not aware of the fact that they could take recourse of further remedy of appeal for enhancement of the amount of compensation, and it is for this reason the delay has occurred. The Act is a beneficial piece of legislation. Therefore, for the reasons stated in the application, same is allowed and the delay of 450 days in filing the appeal is condoned.

FAO-5368-2014 (O&M)

Appellants-claimants have filed the present appeal against the award dated 01.10.2012 passed by learned Motor Accident Claims Tribunal, Rupnagar (for short “the Tribunal”), whereby in a claim-petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of death of Radha Devi, aged out 35 years, the Tribunal has awarded a total compensation of ₹4,00,000/-.

Briefly stated as per claim-petition, Radha Devi (since deceased), aged about 35 years was a housewife and was doing tailoring and stitching work. On 27.01.2011, when deceased Radha Devi along with her

daughter Sonam Devi was going towards Phase-I, Mohali side on a Honda Aviator Scooter bearing registration No.PB-65-H-4702 for their domestic work and have reached near MOI Chowk, Phase-I, then Radha Devi stopped her scooter in order to wait for clearance of the road. However, in the meantime, the offending bus bearing registration No.PB-10-AN-7865 being driven by its driver came from Phase-1, Mohali side and struck the same against the scooter of deceased-Radha Devi. As a result of this accident, Radha Devi and her daughter Sonam Devi, who was sitting on the pillion of the said scooter, received multiple serious injuries. They were taken to Civil Hospital, Mohali. But on account of serious injuries suffered by Radha Devi, she was referred to PGI, Chandigarh, where she died on 28.01.2011. Sonam Devi remained as indoor patient on account of injuries suffered by her. On account of death of Radha Devi, the Tribunal has awarded the compensation assessing her income as ₹2,000/- per month and applying multiplier of 17 viz-a-viz age of the deceased.

Learned counsel for the appellants has argued that deceased Radha Devi was aged about 35 years on the date of accident. Even if the income of the deceased is taken to be notional income, the notional income should not be less than the minimum wages of an unskilled worker. The amount under the conventional heads also needs to be awarded to the claimants.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that since the claimants have failed to establish that the deceased was doing tailoring and stitching work, the Tribunal has rightly assessed the notional income of the deceased as ₹2,000/- per month. However, as regards awardable amount under the

conventional heads is concerned, he fairly states that in view of the judgment passed by the Hon'ble Apex Court in case National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009, the claimants can be awarded compensation under the conventional heads.

I have heard the learned counsel for the parties.

Deceased-Radha Devi, who was about 35 years of age, though claimed to be doing the tailoring and stitching work but as no such document has been placed on record by the claimants to prove this fact, the Tribunal has rightly considered that she was not employed and was not doing the work of tailoring and stitching etc. But still it is not in dispute that she was serving the entire family and rendering services to them, in itself is a difficult task. Moreover, the role of a housewife is altogether different and cannot be equated with a person who is employed. The deceased was rendering domestic services. Therefore, this Court finds that the contribution of a housewife should not be undermined and should not be considered less than the minimum wages as prescribed by the authorities from time to time.

Accordingly, this Court finds that taking into consideration the contribution of a housewife, the Tribunal should have assessed the notional income of the deceased as ₹3,500/- per month. This Court has considered the role and contribution of a housewife in **FAO No.976-2017 (IFFCO TOKIO General Insurance Company Limited Versus Narinder Singh and others)**, decided on 14.02.2017 and observed as under:-

“So far as the contention of the learned counsel for the appellant-Insurance Company that the calculated monthly income of the deceased is on the higher side and

is even more than a daily wager is concerned, it cannot be accepted. We cannot equate a housewife with a domestic servant. What a housewife can perform, such services can never be performed by a domestic servant. She not only takes care of all the requirements of her husband, children and other family members by preparing food, washing clothes etc. but she is a person who is available for 24 hours to all the family members. In this manner, a domestic servant/maidservant cannot be a substitute for a wife or a mother to render selfless services to her husband and children.”

Accordingly, the income of deceased-Radha Devi is assessed as ₹3,500/- per month and she being 35 years of age, multiplier 16 should be applied. Since the Tribunal has not awarded compensation under the conventional heads, the claimants are also held entitled compensation under this head.

Accordingly, this Court finds that the claimants are held entitled to compensation in the following manner:-

Monthly income	:	₹3,500
Annual income	:	₹42,000/-
Total loss of dependency (₹42,000 x 16)	:	₹6,72,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Loss of consortium	:	₹40,000/-

Total amount of compensation :	₹7,42,000/-
Amount already awarded :	₹4,00,000/-

Enhanced amount : ₹3,42,000/-

The enhanced amount shall carry interest @ 7.5% per annum

Since the appeal has been filed after a delay of 450 days, the appellants-claimants shall not be entitled to interest for the delayed period.

With the aforesaid modification in the award, the present appeal stands disposed of.

March 26, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No