IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5728 of 2014 (O&M)
Date of decision:14.11.2018.

Sangeeta and others

...Appellants

Versus

Manbir and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: None for the appellants.

Mr. Sanjeev Kodan, Advocate for respondent No.2/Insurance Company.

LISA GILL, J.

CM No.15857-CII of 2014

For the reasons mentioned in the application and the arguments addressed, delay of 532 days in filing of the appeal by the claimants is condoned. However, it is clarified that the claimant is not entitled to interest for the period of delay of 532 days.

Application is disposed of.

FAO No.5728 of 2014

None had appeared on behalf of the appellants on the last date of hearing. Today again, there is no representation on their behalf despite the matter being called twice. However, keeping in view the fact that the present appeal has been filed by the claimants/appellants seeking enhancement of the compensation awarded to them, it is considered just and appropriate to decide the case on merits rather than dismiss the appeal in default or unnecessarily delay the matter.

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Motor

Accident Claims Tribunal, Sonipat (`Tribunal' for short) vide award dated 11.08.2012 on account of death of Virender in a motor vehicle accident on 18.11.2010.

The claimants, who are the wife and parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Virender due to injuries received in a motor vehicle accident which took place on 18.11.2010. FIR No.448 dated 18.11.2010 was registered under Sections 279 and 304-A IPC at Police Station Civil Line, Sonepat against respondent No.1. It was pleaded that the deceased at the time of his death was self employed, earning Rs.10,000/- per month. He was 25 years old at the time of accident. Compensation was thus prayed for.

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 the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further concluded the deceased to be 25 years old at the time of his death and assessed his income as Rs.5400/- per month. Deduction of $1/3^{rd}$ was effected towards the personal expenses keeping in view the number of dependents. After applying a multiplier of 18, total dependency was assessed at Rs.7,77,600/- (366x12x18). A sum of Rs.10,000/- was awarded towards transportation charges and funeral expenses. Another sum of Rs.10,000/- was awarded towards loss of consortium. Thus, claimants were held entitled for total compensation of

Rs.7,97,600/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation.

It is mentioned in the grounds of appeal that income of the deceased has been wrongly assessed at Rs.5400/- whereas in view of the statement of PW3 Sangeeta, widow of the deceased, he was earning Rs.10,000/- per month. Increment on account of future prospects and enhancement of compensation under conventional heads is sought.

Learned counsel for the Insurance Company, however, prays for upholding the award dated 11.08.2012. It is submitted that no increment on account of future prospects be afforded as income of the deceased has been assessed in excess. It is, however, not in dispute that no appeal has been preferred by the Insurance Company.

Heard learned counsel for the Insurance Company and perused the file with his assistance.

There is no dispute regarding deceased having lost his life in the motor vehicle accident. Perusal of the file reveals that there is no evidence on record to indicate the deceased Virender to be earning an income higher than Rs.5400/- as assessed by the learned Tribunal except the bald statement of PW3 Sangeeta, widow of the deceased, to the effect that he was earning Rs.10,000/- being self employed. There is no evidence on record in regard to the specific vocation of the deceased as well. In this situation, learned Tribunal has rightly assessed the income of the deceased as Rs.5400/- per month. There is no merit in the argument raised by learned counsel for the Insurance Company that income of Rs.5400/- is excessive in any manner. The same is accordingly rejected. The deceased was 25 years old at the time of accident. In view of the guidelines laid down by the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, an increment @ 40% has to be afforded on account of future prospects. Deduction of 1/3rd has rightly been effected by the learned Tribunal. Multiplier of 18 has rightly been applied keeping in view the age of the deceased. In view of the judgment of Hon'ble the Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018, appellant No.1 is entitled to Rs.40,000/- towards spousal consortium instead of Rs.10,000/- and appellants No.2 and 3 are entitled to Rs.40,000/- each towards loss of filial consortium. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs. 10,000/- already afforded towards funeral expenses and transportation charges.

Appellants-claimants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	
1.	Income	Rs.5400/- per month Rs.64,800/-
2.	Total income after addition at the rate of 40% on account of future prospects	64,800+25,920 (64,800x40%) = 90,720/-
3.	Income after deduction of 1/3rd on account of personal expenses	90,720–30,240 (90,720/3) = 60,480/-
4.	Total dependency after applying a multiplier of 18	(60,480 **x**18) =10,88,640/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to widow and parents @ Rs.40,000/- each 40,000x3=1,20,000/-	1,20,000/-
	Grand Total	12,38,640/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the award dated 11.08.2012, present appeal is disposed of.

Copy of this order be conveyed to the appellants at the address available on the record. In case of any grievance, the appellants are at liberty to move an appropriate application within two months of the receipt of copy of this order.

(LISA GILL)
JUDGE

November 14, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No