

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

FAO No.4605 of 2015 (O&M)
Date of decision: 16.04.2018

Saroj Devi and ors.

... Appellants

versus

Surender Singh Yadav & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Arvind Kumar Yadav, Advocate
for the appellants.

Mr. Puneet Jain, Advocate
for Insurance Company.

Hari Pal Verma, J.(Oral)

CM No.14543-CII of 2015

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 27 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 27 days in filing the instant appeal is condoned.

CM-14542-CII-2015

Prayer in this application filed under Section 151 CPC is for condonation of delay of 301 days in re-filing the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 301 days in re-filing the appeal is condoned.

FAO No.4605 of 2015

The claimants have filed the present appeal seeking

enhancement of compensation over and above the amount awarded by the Motor Accident Claims Tribunal, Rewari (in short 'the Tribunal') vide award dated 04.10.2013.

The appellants had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Satpal, aged about 48 years, in a motor vehicular accident, which took place on 14.06.2012. The Tribunal, after considering all aspects awarded a total compensation of Rs.5,70,400/- along with interest @ 7% per annum from the date of filing of the petition till its realisation.

Not satisfied with the aforesaid compensation, the claimants have filed the present appeal.

Learned counsel for the appellants has argued that on 14.06.2012 Satpal (since deceased) was going to his village Jat Sayarwas from village Turkiyawas on his bicycle and at about 8.00 pm when the deceased reached near T-point (water tank) of his village, a motorcycle bearing registration No.HR-36-D-6951 being driven by respondent No.1 in rash and negligent manner and at a very high speed came from behind and hit the bicycle of the deceased. As a result thereof, the deceased sustained serious injuries. He was taken to Naithani Neuro Centre, Rewari, but unfortunately, he died on 15.06.2012 because of the injuries received in the accident. FIR No.71 dated 15.06.2012 under Sections 279, 304A IPC was registered at police station Sadar Rewari regarding the negligent driving of respondent No.1.

Learned counsel for the appellants has argued that the deceased Satpal was about 48 years and 11 months of age at the time of accident. His

date of birth as per the school record is 10.07.1963 and the accident occurred on 14.06.2012. He produced the certificate issued by the Headmaster, Govt. Primary School, Jant (Rewari) dated 13.07.2012 in support of his date of birth, which is taken on record as mark 'A'. As the deceased was 48 years and 11 months of age on the date of accident, the claimants are entitled to addition of 20% towards future prospects as held by the Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi, 2017 SCC 270***. The multiplier of 13 has rightly been applied in view of law laid down in ***Sarla Verma and ors. vs. Delhi Transport Corp. and anr., 2009(6) SCC 121***. The deceased has left behind a widow and two sons namely Samay Singh (22 years) and Sunil Kumar (20 years). One of the sons of the deceased namely Samay Singh (22 years) is 100% handicapped and is unable to stand and walk without any support. Learned counsel for the appellants has produced a photocopy of medical certificate for Orthopaedically Handicapped person issued by the Civil Surgeon, Rewari dated 25.05.2005, which is taken on record as mark 'B'.

On the other hand, learned counsel for the insurance company has argued that adequate compensation has already been awarded to the claimants and since the claimants themselves have stated that the age of deceased was 50 years, therefore, on this basis the Tribunal has applied the multiplier of 13 and it cannot be accepted at this stage that the age of deceased was 48 years and 11 months on the date of accident. Similarly, in the absence of any evidence that claimant No.2 Samay Singh is 100% handicapped this argument cannot be accepted, as the claimants have not adduced any evidence as required under law to substantiate the fact that

Samary Singh is 100% handicapped.

I have heard learned counsel for the parties.

The death of Satpal in the accident is not in dispute. In support of the age of deceased, learned counsel for the appellants produced the photocopy of the certificate issued by the Headmaster, Govt. Primary School, Jant (Rewari) dated 13.07.2012 which shows that date of birth of deceased is 10.07.1963. Therefore, the deceased was less than 50 years of age and in the light of judgment of Hon'ble Apex Court in *Pranay Sethi's case(supra)*, the claimants are entitled to addition of 25% towards future prospects. At the same time, this Court cannot ignore the fact that the deceased has left behind a widow and two sons and one son Samay Singh is 100% handicapped and is unable to stand and walk without support. Since claimant No.2 has lost his father, this Court finds that an attendant for him has become a necessity. Though no such evidence has been produced that the claimants had employed an attendant for claimant No.2, but at the same time, the day-to-day movement of Samay Singh must have been restricted or he must be getting assistance from some attendant. Therefore, this Court finds that a consolidate amount of Rs.50,000/- is awarded to claimant No.2 towards attendant charges. With the assistance of parties, this Court finds that the claimants are entitled to compensation in the following manner:

<i>Heads</i>		<i>Calculation</i>
Monthly income		Rs.5,000/-
Future Prospects 25%		Rs.1,250/-
Total monthly income (monthly income + future prospects)		Rs.6,250/-
Annual income (Total monthly income x 12)		Rs.75,000/-

<i>Heads</i>		<i>Calculation</i>
Deductions toward personal expenses of deceased	1/3	
Annual dependency		Rs.50,000/-
Multiplier	13	
Total loss of dependency		Rs.6,50,000/-
Attendant charges for claimant Samay Singh being 100% physically handicapped		Rs.50,000/-
<u>Conventional heads</u>		
Loss of estate	:	Rs.15,000/-
Funeral expenses	:	Rs.15,000/-
Loss of consortium	:	Rs.40,000/-
Total amount of compensation		Rs.7,70,000/-
Amount already awarded		Rs.5,70,400/-
Total enhancement		Rs.1,99,600/-

Thus, the claimants are entitled to enhanced compensation of Rs.1,99,600/- over and above the amount awarded by the Tribunal. The claimants are also entitled to interest @ 7.5% per annum on the enhanced compensation from the date of filing of claim petition till its realization.

Since the appeal has been filed after a delay of 27 days in filing the appeal and 301 days in re-filing the appeal, the appellants shall not be entitled for interest for the period during which the present appeal remained barred by limitation.

At the same time, it is made clear that in case the medical certificate produced by the claimants issued by Civil Surgeon, Rewari showing Samay Singh as 100% physically handicapped is found to be false, the insurance company is at liberty to move an application for recalling of this order qua the compensation awarded to claimant No.2. The claimants shall file an affidavit before the Tribunal that in case it is found that the certificate issued by the Civil Surgeon, Rewari, regarding 100%

handicapped is not found true, the claimant shall return the amount granted under this head, along with interest @ 7.5% per annum for the period for which amount remained with them.

With this modification, the appeal is disposed of.

16.04.2018
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(HARI PAL VERMA)
JUDGE

1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No