IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4606-2015 (O&M)
Date of decision: 28.02.2018

Smt. Sanju Devi and ors. ... Appellants

VS

Bijender & ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Puneet Singh, Advocate for
Mr. A.K.Goel, Advocate
for the appellants.

Mr. J.S.Saneta, Advocate
for respondent Nos.1 and 2.

Mr. M.B.Jain, Advocate
for the insurance company.

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Hari Pal Verma, J.(Oral)

CM-14544-CII-2015

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 380 days in filing the present appeal.

In the application, it has been pleaded that apart from the fact that the appellants are poor persons, they came to know about the decision of the Tribunal only in the last week of February, 2015 when they had approached the trial Court counsel so as to ascertain the status of the proceedings in the case. It is thereafter they contacted the present counsel to file the present appeal.

The award was passed by the trial Court on 14.11.2013.

Notice was issued to the respondents in the case on 19.11.2015

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and thereafter, reply had been filed to the delay application wherein it has been pleaded that there is a huge delay in filing the appeal and the case of the appellants is not covered with the 'sufficient cause' so as to condone the delay, which is inordinate.

I have heard learned counsel for the parties. Appellant No.1 has lost her husband while appellant No.7 has lost her son namely Pawan Kumar and it is the pleaded case of the appellants that on account of poverty they could not prefer an appeal in time. Considering the plea raised in the application that the award dated 14.11.2013 came to their notice only in the last week of February, 2015, when they approached the trial Court counsel to ascertain the status of the proceedings, thereafter they preferred the present appeal, this Court finds that the appellants have shown sufficient cause to condone the delay of 380 days in the filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 380 days in filing the instant appeal is condoned.

CM-14545-CII-2015

Prayer in this application filed under Section 151 CPC is for condonation of delay of 8 days in re-filing the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 8 days in re-filing the appeal is condoned.

FAO-4606-2015

The claimants have filed the present appeal seeking enhancement of compensation over and above the amount awarded by the Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal') vide award dated 14.11.2013.

Admittedly, the accident and other liabilities are not in dispute.

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What is in dispute is the quantum of compensation awardable to the appellants.

Briefly stated, the appellants filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 for grant of compensation on account of death of Pawan Kumar, aged 38 years, in a motor vehiclular accident, which took place on 14.01.2013. The Tribunal after considering all aspects awarded a total compensation of Rs41,07,314/- along with interest @ 6% per annum from the date of filing of the claim petition till its realisation. The deceased Pawan Kumar was born on 10.05.1972 and was working as a Head Constable in the Border Security Force. He was posted at BSF-67 Battalion, Amritsar. The deceased Pawan Kumar was getting a salary of Rs.25,993/- per month and his annual income was assessed as Rs.3,11,916/- . He left behind seven dependents. While calculating the aforesaid amount, the Tribunal held as under:

> *16. As per salary certificate Ex.P2, the gross salary of Pawan Kumar at the time of his death was Rs.28,383/-. However, no details of deductions have been given in this document. It is admitted by PW2 Vijaypal Constable in cross-examination that net salary of Rs.12,076/- was being drawn by the deceased. The gross salary of the deceased shown in salary certificate Ex.P2 includes TPT Rs.1440/- per month, Family accommodation allowance of Rs.875/- per month and washing allowance of Rs.75/- per month. These allowances were attached to the service of deceased Pawan Kumar and after his death, his legal heirs were not entitled for these allowances and after deducting this amount from the gross salary of Rs.28,383/-, the total salary of deceased comes to Rs.25,993/- per month and annual income comes to Rs.3,11,916/- (25,993 x 12). In this claim petition, the dependent family members are seven in number and*

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> *therefore, as per judgment of Hon'ble Apex Court in **Sarla Verma & ors. vs. Delhi Transport Corporation & Anr., 2009 ACJ 1298** 1/5 deduction is to be made and after deduction, the annual income comes to Rs.2,49,530/-. As per age of the deceased, 30% further increase is to be given towards future prospects as per Sarla Verma & ors.'s case(supra) and after adding this 30% increase, the annual income of the deceased, 10% income tax is to be deducted and after deduction, the total annual dependency qua the claimants is assessed Rs.2,91,951/- (3,24,390 -32,439). As per service record of deceased Pawan Kumar Ex.P2, his date of birth was 10.05.1972, whereas the accident in question took place on 14.01.2013. In this way, deceased Pawan Kumar was about 40 years old at the time of accident and hence, if appropriate multiplier 14 is applied, then compensation comes to Rs.40,87,314/-. Loss of consortium, loss of estate and funeral expenses are assessed Rs.20,000/-. Hence, total compensation on account of death of deceased Pawan Kumar is assessed Rs.41,07,314/-."*

Learned counsel for the appellants has argued that the claimants are entitled to multiplier of 15 instead of 14 as awarded by the Tribunal, as on the date of accident, the deceased Pawan Kumar was less than 41 years of age though above 40 years. Therefore, his case falls in the age between 40-41 years and the multiplier of 15 required to be applied instead of multiplier 14. He further submits that the claimants have not been awarded adequate compensation under conventional heads and a meager amount of Rs.20,000/- has been awarded under this head. Therefore, in view of the judgment passed by Hon'ble Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi, 2017 SCC 270,*** the claimants are entitled to compensation of Rs.70,000/- under the conventional heads alone.

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On the other hand, learned counsel for respondent No.3 has argued that adequate compensation has already been awarded by the Tribunal. The date of birth of deceased Pawan Kumar was 10.05.1972 and on the date of accident, he was of age 40 years 8 months and 4 days. Therefore, being beyond the age of 40 years, the Tribunal has rightly applied the multiplier of 14. However, he is fair enough to admit the modification in compensation under the conventional heads.

I have heard learned counsel for the parties.

The Tribunal has awarded the compensation after calculating the income of deceased Pawan Kumar as Rs.25,993/- per month. However, this Court finds that the Tribunal has made deduction of income tax on the higher side. In fact, the income tax has to be deducted beyond the exempted limit of income and not on the whole salary. Therefore, this Court finds that instead of making deduction of Rs.32,439/-, the amount should have been Rs.21,165/-. So far as the plea of counsel for the insurance company regarding applicability of multiplier is concerned, this Court is not in agreement that multiplier 14 is rightly applied as on the date of accident, though the age of deceased was more than 40 years but less than 41 years. Therefore, this Court finds that multiplier of 15 should have been applied by the Tribunal. As per Pranay Sethi's case(supra), the claimants are entitled to Rs.70,000/- instead of Rs.20,000/- under the conventional heads. With the assistance of the parties, this Court finds that the claimants are entitled to compensation in the following manner:

Heads		***Calculation***
Monthly income		Rs.25,993.00
Future Prospects 30%		Rs.7,797.90

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Heads		***Calculation***
Total monthly income (monthly income + future prospects)		Rs.33,790.90
Annual income (Total monthly income x 12)		Rs.4,05,490.80
Income Tax		Rs.21,165.00
Annual income (after tax deduction)		Rs.3,84,325.80
Deductions toward personal expenses of deceased	1/5th	
Annual dependency		Rs.3,07,460.64
Multiplier	15	
Total loss of dependency		Rs.46,11,909.60
Conventional heads		
Loss of estate	:	Rs.15,000/-
Funeral expenses	:	Rs.15,000/-
Loss of consortium	:	Rs.40,000/-
Total amount of compensation		Rs.46,81,909.60
Amount already awarded		Rs.41,07,314.00
Total enhancement		**Rs.5,74,595.60**
		(Rounded off to Rs.5,74,600/-)

Thus, the claimants are entitled to enhanced compensation of Rs.5,74,600/- over and above the awarded amount by the Tribunal. The claimants are also entitled to interest @ 7.5% per annum on the enhanced amount of compensation from the date of filing of claim petition till its reaslisation.

Since the appeal has been filed after a delay of 380 days, the appellants shall not be entitled for the interest for the period for which the present appeal was barred by limitation.

With this modification, the appeal is disposed of.

28.02.2018 **(HARI PAL VERMA)**
sonia **JUDGE**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No

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