IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5714 of 2015(O&M)
Date of Decision:30.11.2018

Jasvir Kaur and others ....APPELLANTS

Vs.

Harinder Singh and others ....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Navjeet Singh, Advocate for the appellants.

Mr.Rajneesh Malhotra, Advocate for respondent No.3-Insurance Company.

****

DR. RAVI RANJAN, J.(Oral)

CM No.17949-CII-2015

This application has been filed by the applicants-appellants seeking condonation of delay of 149 days in filing the present appeal.

Heard parties.

No counter has been filed on behalf of the respondent No.3-Insurance Company.

Having perused the grounds taken in the application, this Court is of the opinion that the applicants-appellants were prevented by sufficient cause from preferring this appeal within time. As such, the application is allowed and delay of 149 days in filing the present appeal, is hereby condoned.

FAO No.5714 of 2015

The present appeal is directed against the judgment and award dated 29.11.2014 passed in MACT No.211 of 17.10.2012 by the Motor Accident Claims Tribunal, Ludhiana. This appeal has been filed on behalf of the claimants-appellants for enhancement of the awarded compensation amount on account of death of Gurmail Singh in a motor vehicular accident.

I have heard learned counsel for the parties and perused the materials on record. Short facts necessary for consideration of the *lis* stand enumerated as under:-

On 16.06.2012, claimant Satwant Singh was riding his motorcycle No.PB-10-CD-2370 and one Kaur Singh, who died in the same accident alongwith Gurmail Singh son of Nachhatar Singh, deceased for whom the present claim is sought for, both residents of Village Guram were riding on motorcycle bearing No.PB-10-CL-9253 as all of them had visited their relations in Gopalpur at about 7.00 p.m. in the evening. When Gurmail Singh and Kaur Singh reached near Vijay Shining Public School, Village Gopalpur, one car bearing registration No.PB-10-BY-2870 driven by respondent No.1 rashly and negligently, rammed into the motorcycle of Kaur Sngh. As a result, Kaur Singh and Gurmail Singh received injuries on their bodies and succumbed to those injuries at the spot. The accident took place due to rash and negligent driving of respondent No.1-Harinder Singh. The accident was witnessed by Satwant Singh. Respondent No.1 escaped with the vehicle from the spot. Respondent No.1, while running away hit another motorcycle bearing registration No.PB-10-CQ-5868 which was driven by Kulwant Singh son of Jarnail Singh resident of Dharampur, who also received injuries on his person. Thereafter, FIR No.63, dated 16.06.2012 under Section 279, 304-A, 337, 427 IPC was registered at the instance of Satwant Singh. Claimant No.1 is the widow of deceased Gurmail Singh whereas claimants No. 2 to 5 are his children.

There is no cross appeal and it has been informed at the time of hearing that there is no separate appeal also challenging the Award by respondent No.3-Insurance Company. Respondents No. 1 to 3 has been fastened with the liability for payment of compensation amount. Since it is accepted proposition that the accident has been caused due to rash and negligent driving of the offending vehicle driven by respondent No.1-Harinder Singh, the insurance company was found liable to pay the awarded amount.

Learned counsel for the appellants has submitted that at the time of hearing, the evidence which was led on behalf of the claimants in support of their submissions that the deceased was engaged in agricultural as well as purchase and selling of cattle, has not been considered.

However, when a question was asked as to what were those documents, then it is informed that those documents were receipts showing weight of the cattle.

In my considered view that cannot be a document, relying upon which, a Court or Tribunal could have come to the conclusion that the deceased was engaged in such type of business and his income was Rs.50,000/- as not even a single chit of paper in respect of payment of taxes or duties etc. in business or income tax return filed on account of earning have been brought on record. Thus, such type of submission is noted only to be rejected.

It is next submitted by learned counsel for the appellants that even future prospect has not been considered while calculating the compensation amount.

In my considered view that was required to be done in view of the decision of the Hon'ble the Supreme Court rendered in ***National Insurance Company Ltd. Vs. Pranay Sethi and others,*** ***2017 (4) R.C.R. (Civil)***, as the deceased was 52 years old at the time of death, he has to be considered under Clause IV of paragraph 61 of the aforesaid judgment. It discloses that in case the deceased was self-employed or on a fixed salary and was aged 52 to 60 years, 10 % of the income would have to be added under the head for determination of the income under the head of future prospects.

Accordingly, I hold that the award has to be modified in terms thereof.

That apart though admittedly there were five dependents of the deceased, but the Court has deducted 1/3rd of the income assessed towards personal expenditure which, in my view, ¼th of the income in terms of the decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr, 2009 (3) R.C.R. (Civil) 77***.

Learned counsel appearing for respondent No.3-Insurance Company though does not make any objection to the aforesaid submissions but a point has been raised by him that in view of the *Pranay Sethi's case (supra)*, only Rs.70,000/- can be awarded under the heads of funeral charges, loss of consortium and loss of estate, whereas in the present case Rs.1,25,000/- has been awarded.

However, this Court will not proceed to consider the aforesaid submission for two reasons:-

First is that there is no cross appeal or separate appeal filed by the Insurance Company challenging the Award. Secondly, admittedly such amount has already been paid by the Insurance Company and it would now be very difficult for the dependents to return about Rs.55,000/-.

As such, the award of the learned Tribunal is modified by making following calculation:-

Sr. No.	***Heads of compensation***	***Amount***
1.	Income	Rs.4500/-
2.	Future prospects 10%	Rs.4500/-+Rs.450/-=Rs.4950/-
3.	Deduction ¼th	Rs.4950-Rs.1237.50=Rs.3712.50
4.	Total loss of dependency after applying the multiplier of 11	Rs.3712.5x12x11=Rs.4,90,050/-
5.	Conventional heads	Rs.1,25,000/-
	Total amount	Rs.Rs.4,90,050/-+Rs.1,25,000/-=Rs.6,15,050/-
	Enhanced amount of compensation	Rs.6,15,050/-(minus) Rs.5,21,000/-=Rs.94050/-

Obviously, the awarded amount has to be given after deduction of the amount which has already been paid by the Insurance Company and interest @ 9% is kept intact.

Accordingly, the Award of the learned Tribunal stands modified and enhanced to the aforesaid extent.

In the result, this appeal stands allowed to the extent as indicated above. However, parties shall bear their own costs.

(DR. RAVI RANJAN)
JUDGE

30.11.2018
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No