IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-7499-2014 (O&M)
Date of Decision:20.07.2018

Lalita Devi & others ... Appellants

Versus

Darshan Singh & another ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Kapil Aggarwal, Advocate for the appellants.

Ms. Shamsher Kaur, Advocate for respondent No.2.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

CM-20070-CII-2014:

In view of the averments made in the application and submissions advanced by counsel, I find that sufficient cause has been shown for condonation of delay of 399 days that has occurred in filing the accompanying appeal.

2. Delay condoned.

3. Application is disposed of.

Main case:

This is claimants' appeal seeking enhancement.

2. Briefly, it may be noticed that claim petition i.e. MACT case No.121-RT-2011 was filed in the Motor Accident Claims Tribunal, Narnaul under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.35 lakhs on account of death of Mukhender in a motor vehicle accident that has occurred on 29.09.2011. Claimants are the widow, minor daughter,

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minor son and mother of the deceased.

3. It was stated in the claim petition that Mukhender (since deceased) along with Ved Parkash were proceeding on a motorcycle and on 29.09.2011 at about 5:30 PM, a truck bearing registration No.CGO-4G-3894 being driven in a rash and negligent manner by respondent No.1/Darshan Singh came from behind and struck against the motorcycle. Mukhender is stated to have died on the spot and Ved Parkash also succumbed to the injuries suffered while being taken for medical attention.

4. Claimants asserted that Mukhender was 38 years old and was getting salary @ Rs.7000/- per month as he was working as helper with Shiv Electrical Store. In addition thereto, he was also earning Rs.10,000/- per month while indulging in agriculture work.

5. The claim petition was contested in terms of filing separate written statements by the respondents. Upon the pleadings of the parties, the following issues were framed by the Tribunal:

> *"1. Whether the motor vehicle accident which took place on 29.9.2011 was caused on account of rash and negligent driving of vehicle bearing registration No.CGO/4G/3894 by respondent No.1 resulting into death of Mukhender and Ved Parkash, if so its effect? OPP*
>
> *2. If issue No.1 is proved, whether the claimants are entitled to receive any amount of compensation, how much and from whom? OPP*
>
> *3. Whether respondent No.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPR*
>
> *4. Whether the claim petitions are not maintainable? OPR*
>
> *5. Relief."*

6. Insofar as issue No.1 was concerned, Tribunal recorded a

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finding that the accident took place on account of rash and negligent driving of the offending truck by respondent No.1 and which has resulted in the death of Mukhender and Ved Parkash.

7. As regards quantum of compensation, the Tribunal has taken the age of the deceased to be 38 years and has assessed the monthly income of Rs.7000/-. 30% increase in monthly income towards future prospects was allowed. Deduction of 1/5th of the income towards personal and living expenses of the deceased was applied. Taking the age of the deceased as 38 years as per Post Mortem Report, Ex.P-9, multiplier of 15 was applied. The amount compensation computed as such was Rs.13,10,400/-. In addition thereto, claimants were awarded Rs.10,000/- towards funeral expenses, Rs.5000/- was awarded to the widow under the head of the loss of consortium, Rs.5000/- for loss of love and affection and Rs.5000/- under the head of loss of estate. The total compensation awarded was Rs.13,35,400/- which was directed to be paid along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the actual payment.

8. Since the only issue arising in this appeal is with regard to quantum of compensation, I have heard Mr. Kapil Aggarwal, Advocate for the appellants and Ms. Shamsher Kaur, Advocate for contesting respondent No.2/Insurance Company. It would be apposite to take note that after passing of the award dated 27.02.2013 by the Motor Accident Claims Tribunal, Narnaul, one of the claimants, namely, Smt. Janak Devi, mother of the deceased expired on 28.02.2013. Accordingly, the appellants before this Court are remaining claimants i.e. widow, minor daughter and minor son of the deceased-Mukhender.

9. In the considered view of this Court, the compensation awarded

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by the Tribunal requires to be revised suitably in terms of the dictum laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009.**

10. Even though, claimants had set up a case that the deceased Mukhender was earning Rs.17,000/- per month but no evidence had come forth to substantiate that he was earning Rs.10,000/- from agriculture work. The Tribunal has rightfully assessed the monthly income of the deceased to be Rs.7000/- based upon oral and documentary evidence i.e. statement of Udami Ram, Proprietor of M/s Shiv Electrical Stores and who proved on record the original service and salary record of the deceased. As per statement of such witness, deceased was working as a Helper and getting salary of Rs.7000/- per month. Even documentary evidence in the nature of attendance register, Ex.PW4/B, Contractor's license issued by the Government of Rajasthan, Ex.PW4/C and the Central Excise and Service Tax registration form, Ex.PW4/D were taken into account. As such, no interference is called for as regards income of the deceased assessed at Rs.7000/- per month.

11. Keeping in view that the deceased was on a fixed salary, increase in income at the rate of 40% instead of 30% towards future prospects ought to have been awarded by the Tribunal as per guidelines laid down in **Pranay Sethi's case (supra).**

12. Since the dependant family members upon the deceased were between 4 to 6, $1/4^{th}$ deduction towards personal and living expenses should have been made instead of $1/5^{th}$ cut that has been applied.

13. Furthermore, under the conventional heads of funeral expenses, loss of estate, loss of consortium etc., the amount requires to be enhanced to

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Rs.70,000/-.

14. In view of the discussion herein above, the amount of compensation is re-assessed in the following terms:

Sr. No.	Computation/Head	Revised calculation
1.	Income Rs.7000/-	40% increased towards future prospects i.e. 7000+2800=9800/-
2.	1/4th cut towards personal and living expenses of the deceased	9800-2450=7350/-
3.	Compensation after applying multiplier of 15	7350 x 12=88200/- 88200 x 15 =13,23,000/-
4.	Conventional Heads i.e. funeral expenses and loss of consortium etc.	Rs.70,000/- 13,23,000+70,000=13,93,000/-
5.	Total	Rs.13,93,000/-

15. The afore calculated revised and enhanced compensation be released in favour of Lalita Devi/appellant No.1 being the widow and natural guardian of appellants No.2 and 3 along with 6% interest from the date of filing of the claim petition till actual date of realization. However, it is clarified that while calculating interest, the period of delay in filing the instant appeal i.e. 399 days shall be excluded.

16. Appeal is allowed in the aforesaid terms.

20.07.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No

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