

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

**FAO NO. 8081 OF 2014 (O&M)
RESERVED ON: AUGUST 20, 2018
DATE OF DECISION: NOVEMBER 26, 2018**

Om Parkash and anotherAppellants

Versus

Rajbir Singh and othersRespondents

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

Present: Mr.Raman Chawla, Advocate for the appellants.

Mr.Sajjan Singh, Advocate for respondent No.1.

Mr.Amit Jaiswal, Advocate for respondent No.3.



TEJINDER SINGH DHINDSA, J.

CM No.21833-CII of 2014

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 107 days that has occurred in filing the accompanying appeal.

2. In view of the averments made in the application and by recording statement of the learned counsel representing the applicants – appellants that in the eventuality of this Court accepting the main appeal and enhancing compensation, the period of delay be excluded while computing the component of interest. Prayer is allowed.

3. Delay condoned.

4. Application is disposed of.

Main case

5. This is claimants' appeal seeking enhancement of compensation.

6. Brief facts are that a claim petition under Section 166 of the Motor Vehicles Act was filed seeking compensation to the tune of Rs.5 lakhs on account of death of Naresh Kumar in a motor vehicular accident that took place on 18.3.2000. Claimants were the parents of the deceased. It was asserted by the claimants that on the fateful day at about 8.00 p.m., Naresh Kumar (since deceased) was proceeding on foot towards his village on the left side of the road and whereupon a truck bearing registration No.HR38-1467 being driven in a rash and negligent manner came from Fatehabad side and hit Naresh Kumar from the back side. Naresh Kumar is stated to have died on account of serious multiple injuries suffered in such accident. FIR as regards the accident was lodged at Police Station Agroha.

7. Claim petition having been contested, the Motor Accident Claims Tribunal, Hissar vide award dated 17.9.2013 returned findings in favour of the claimants and held that death of Naresh Kumar took place on account of injuries suffered involving the offending/insured vehicle and on account of rash and negligent driving by the driver, namely, Ramesh Kumar. Such findings have not been assailed by the driver/owner as also the Insurance Company and the same have, as such, attained finality.

8. Scope of the instant appeal is limited only with regard to quantum of compensation.

9. The Tribunal in the award dated 17.9.2013 has awarded the

compensation amount of Rs.2,50,000/- and in addition thereto, an amount of Rs.10,000/- towards loss of love and affection and a like amount of Rs.10,000/- towards loss of company. The total compensation amount awarded is Rs.2,70,000/- along with interest @7% per annum from the date of filing of the claim petition till actual realization. The liability to pay the compensation amount has been held joint and several upon the driver, owner and the insurer of the offending vehicle.

10. Learned counsel for the claimants-appellants has argued that the deceased was 14 years of age at the time of accident and was earning a sum of Rs.1500/- to Rs.2000/- per month by working in an Auto Workshop. It is urged that it was obligated upon the Tribunal to have computed the compensation amount by granting requisite percentage in addition of income towards future prospectus and thereafter by applying multiplier as per parameters laid down by the Apex Court in “**Smt.Sarla Verma & others v. Delhi Transport Corporation and another**”, 2009(3) RCR (Civil) 77. Further contended that even under the conventional heads i.e. loss of estate and funeral expenses, no amount has been awarded.

11. Per contra, learned counsel representing respondent No.3 – Insurance Company has supported the award passed by the Tribunal Court and the compensation amount awarded therein.

12. Having heard learned counsel for the parties at length, this Court is of the considered view that the compensation amount awarded deserves to be enhanced in the light of the judgment of the Apex Court in **Kishan Gopal and another v. Lala and others**, 2013 ACJ 2592. In such case, the Apex Court awarded compensation of Rs.5 lakhs on account of

death of a child, aged about 10 years. Further an additional sum of Rs.50,000/- was awarded towards love and affection.

13. Learned counsel representing the contesting Insurance Company does not contest that dictum in **Kishan Gopal's** case (supra) would apply even to the facts of the present case. However, the submission that compensation amount of Rs.50,000/- towards love and affection cannot sustain in the light of the subsequent constitutional Bench judgment rendered by the Apex Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** is well founded.

14. In view of the above, instant appeal is allowed. Compensation amount awarded by the Tribunal i.e. Rs.2,70,000/- is enhanced to Rs.5 lakhs.

15. The enhanced compensation amount be released in favour of the appellants along with interest @ 6% per annum from the date of filing of instant appeal till actual realization. It is, however, clarified that while calculating interest amount, the delay period of 107 days in filing the present appeal would be excluded.

16. Appeal is allowed in the aforesaid terms.

(**TEJINDER SINGH DHINDSA**)
JUDGE

NOVEMBER , 2018

SRM

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>