IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217 **FAO-8206-2014(O&M)**

Date of Decision:30.01.2018

Shri Ram General Insurance
Company Limited **.....Appellant**

Versus

Mohar Singh and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Arun Sharma, Advocate for
Mr. Tajender K. Joshi, Advocate,
for the appellant.

None for the respondents.

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HARI PAL VERMA, J.(Oral)

CM-22258-CII-2014

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 82 days' in filing the appeal.

It has been pleaded in the application that after passing of the award dated 06.12.2013, certified copy of the award was applied for, which was received by the counsel for the appellant on 13.12.2013. Thereafter, copy of the award was sent to Jaipur office of the appellant-insurance company in the last week of January, 2014 and the same was received back by the appellant on 03.02.2014. On receipt of the award, it was decided to file an appeal and accordingly, counsel who was representing the appellant before the MACT was asked to send the whole record including the copies of the evidence. The counsel had sent the complete record of the case to the appellant on 14.03.2014 and on 28.03.2014, consent for filing the appeal was given. Case was accordingly processed for preparing a draft of the statutory amount. Thereafter, on 05.04.2014, a major fire incident took place in the corporate office of the appellant-insurance company, which resulted into huge damage to the property, various files, documents and systems. In these circumstances, the appeal could not be preferred within the prescribed period of limitation.

Though notice of the application was issued but no reply has been filed in this regard.

Considering the fact that the appellant had been pursuing the matter with due diligence and the fire incident is one of the relevant factors due to which the delay has been caused, there are sufficient reasons to condone the delay.

Accordingly, for the reasons mentioned in the application, same is allowed and the delay of 82 days' in filing the appeal is condoned.

C.M. stands disposed of accordingly.

FAO-8206-2014(O&M)

Appellant-Shri Ram General Insurance Company Limited has filed the present appeal against the award dated 30.11.2013 passed by the learned Motor Accident Claims Tribunal, Nuh (for short "the MACT").

In a claim-petition filed by the respondents-claimants Mohar Singh and Durga (father and mother of deceased Surender Saini) under Sections 140/166 of the Motor Vehicles Act, the learned MACT has awarded a total compensation of ₹9,27,200/- on account of death of Surender Saini.

The claimants have filed the claim-petition on account of death of their son Surender Saini, who died in a motor vehicular accident, which took place on 28.03.2011. In the claim-petition, it has been submitted that Surender Saini and Tahir along with other passengers were going from Sohna to Gurgaon in a Max Cab bearing registration No.HR-55D-6356 being driven at a moderate speed and when it reached near Chungi No.1, the offending vehicle bearing registration No.HR-63A-1890 being driven in a rash and negligent manner came from Gurgaon side. The offending vehicle struck against the Max Cab after crossing the divider, due to which the Max Cab was badly damaged and the offending vehicle turned turtle on the Max Cab. In the said accident, Tahir died at the spot. Surender Saini also received injuries and he was taken to the General Hospital Sohna. Taking into consideration the grievous injuries, he (Surender Saini) was referred to Gurgaon, but unfortunately he succumbed to his injuries on his way. An FIR No.122 dated 28.03.2011 under Sections 279/304-A IPC was registered in Police Station Sohna against the driver.

Deceased Surender Saini was 25 years of age and drawing salary of ₹5,600/- per month. PW9-Vikas Srivastava, who was Service Manager of Autolink Enterprises (I) Private Limited, Sheetla Mata Mandir Road, Gurgaon, has deposed that Surender Saini was working with them and was drawing salary of ₹5,600/- per month. Considering the age, marital status and salary drawn by the deceased, the learned MACT has granted a total compensation of ₹9,27,200/-. The learned MACT has also awarded 50% towards future prospects and an amount of ₹20,000/- for loss of love & affection and for conducting last rites.

Learned counsel for the appellant has argued that the awarded compensation is on higher side. He has further argued that in view of the law laid down by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others**, **2017 (4) R.C.R (Civil) 1009,** the deceased being 25 years of age, 40% future prospects should be granted instead of 50%.

Nobody has put in appearance on behalf of the respondents-claimants and vide order dated 24.03.2015, they were proceeded against ex parte. It is pertinent to mention here that vide order dated 29.10.2014, while issuing notice of motion in this case, this Court has passed the interim order “meanwhile, amount to be deposited by the appellant shall be released to the claimants subject to furnishing adequate security”.

I have heard the learned counsel for the appellant and considering the law laid down by the Hon'ble Supreme Court in **Pranay Sethi's case (supra),** this Court finds that the claimants were entitled to have future prospects @ 40% instead of 50% as awarded by the Tribunal but in view of in view of order dated 22.11.2017 passed by Hon'ble Apex Court in **Civil Appeal No.8611 of 2017**, while dealing with a bunch of petitions/appeals in **Special Leave Petition (Civil) No.22134 of 2016** titled as **Hem Raj Versus The Oriental Insurance Company Limited and others**, no recovery can be ordered at this stage. Deceased Surender Saini was about 25 years of age and was doing a private job. He was drawing a salary of ₹5,600/- per month and was unmarried. So far as the salary, age and applicability of multiplier of 18 of the deceased is concerned, there is no dispute about it. However, considering the law laid down in **Pranay Sethi's case (supra)**, the deceased being self-employed, his income was established but he being below 40 years and employed in a private Establishment, future prospects should be given @ 40% instead of 50%.

Though this Court finds that the claimants are entitled for future prospects @ 40%, but in view of order passed in **Hem Raj's case (supra)**, the amount already received by the claimants is not liable to be refunded.

Admittedly, in the present appeal, the amount of compensation has already been disbursed to the claimants, though against surety, in view of order dated 29.10.2014 passed by this Court.

Accordingly, in view of the protection granted by Hon'ble Apex Court, this Court finds that small variations shall not entitle the appellant to effect recovery from the claimants, even if any amount has been paid in excess to the calculations.

The present appeal is accordingly dismissed.

January 30, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No