

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-
FAO 5805 of 2016 (O&M)
Date of decision: 05.12.2018

Ashok and another*Appellants*
Versus
Umed Singh and others*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

Present : Mr. Arvind Kumar Yadav, Advocate
 for the applicants/appellants
 -.-

Rekha Mittal, J. (Oral)
CM 19903 CII of 2016

Prayer in this application is for condoning delay of 14 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of one of the applicants/appellants and arguments advanced, the application is allowed and delay of 14 days in filing the appeal stands condoned.

Main case

The claimants are in appeal seeking enhancement of compensation on account of death of Anoop in a motor vehicular accident that took place on 21.12.2014.

The Tribunal has awarded compensation of Rs.10,42,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.6,000.00
Addition in income for future prospects	Fifty percent

Deduction for personal and living expenses	Fifty percent
Multiplier	18
Loss of dependency	Rs.9,72,000.00
Loss of estate	Rs.20,000.00
Expenses of last rites and transportation	Rs.25,000.00
Loss of love and affection to parents	Rs.25,000.00

The sole submission made by counsel for the appellants is that as the deceased was a driver working with VS Enterprises, Shop No. 21, Chaudhary Complex, near Bikaner Sweet, Khandsa (Gurgaon) at salary of Rs.9,000.00 per month, income of the deceased, assessed by the Tribunal is liable to be enhanced. Counsel would further submit that Hon'ble the Supreme Court in *Minu Rout and another vs Satya Pradymna Mohapatra and others, 2014(1) SCC (Criminal) 384* assessed salary of deceased Car driver, died in an accident on 08.11.2004, at Rs.6,000.00 per month, therefore, income of the deceased is liable to be enhanced.

The claimants examined Ishwar Singh (PW4) to prove that deceased was working as driver with VS Enterprises and produced salary slip Ex.PW4/A, objected to by contesting counsel. The witness did not produce authority letter of VS Enterprises nor any other documents to establish that the deceased was working as driver with VS Enterprises much less at salary of Rs.9,000.00 per month. In the given circumstances, the Tribunal has rightly refused to rely upon testimony of Ishwar Singh in regard to avocation and income of the deceased. However, income of the deceased assessed by the Tribunal is on the basis of minimum wage available to an unskilled worker at the relevant time, therefore, there is no justification for allowing income more than minimum wage.

The Tribunal has allowed benefit of increase in income at the

rate of 50% as against 40% admissible in the light of latest judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.*** However, compensation allowed under conventional heads may need some addition. In case compensation is assessed by extending benefit of increase in income for future prospects at the rate of 40% and a sum of Rs.1,10,000.00 under conventional heads in the light of latest judgments of Hon'ble the Supreme Court in ***Pranay Sethi's*** case (supra) and ***'Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram & Ors.', 2018 (4) R.C.R. (Civil) 333,*** still the compensation assessed by the Tribunal is more than what can be allowed in the circumstances of the case. In this view of the matter, there is no justification for allowing compensation more than what has been allowed by the Tribunal.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

05.12.2018
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