

In the High Court of Punjab and Haryana at Chandigarh

**FAO-9326 of 2014(O&M)
Date of Decision: 14.9.2018**

Mamta and others

---Appellants

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikram Bali, Advocate
for the appellants
Mr. Vinod Chaudhari, Advocate,
for the insurance company

Rekha Mittal, J.

CM No. 25888-CII of 2014

Prayer in this application is for condoning delay of 197 days in filing the appeal.

In view of averments made in the application supported by affidavit of the appellant coupled with that provisions of the Motor Vehicles Act for grant of compensation are benevolent social legislation to save the victim family from the financial loss caused due to accident, the application is allowed, delay of 197 days in filing the appeal stands condoned subject, however, to the condition that in case the compensation is enhanced, the applicants-appellants shall not be entitle to interest for the period of delay.

Disposed of accordingly.

Main case

The claimants are in appeal seeking enhancement of

compensation on account of death of Jagdeep Singh in a motor vehicular accident that took place on 22.4.2011.

The Motor Accidents Claims Tribunal, Panchkula (in short “the Tribunal”) has awarded compensation of Rs.9,23,932/-, detailed hereunder:-

Monthly income of the deceased	Rs. 5000/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/3 rd
Multiplier	17
Loss of dependency	Rs. 8,83,932/-
Funeral expenses	Rs. 25,000/-
Loss to estate	Rs. 5,000/-

Counsel for the appellant would argue that application for compensation has been filed by the widow, two minor children and parents of deceased Jagdeep Singh but the Tribunal has wrongly discarded claim of minors Nidhi and Ajay, admittedly, born out of previous wedlock of Mamta with Jaswinder Singh who also died in a motor vehicular accident. It is argued that statement of Mamta is sufficient to establish the plea that claimants No. 2 and 3 are adopted children of Jagdeep Singh (since deceased). In the alternative, it is argued that even if there is no formal proof with regard to adoption of children by Jagdeep Singh but as the minors had been living with Mamta and Jagdeep Singh and were maintained by Jagdeep Singh, they cannot be denied compensation qua loss of dependency. Adequate compensation may be allowed future prospects and under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal whereby the court has applied deduction for

personal expenses to the extent of $1/3^{\text{rd}}$ by ignoring claim of Nidhi and Ajay.

There is no challenge to testimony of Mamta that after death of her previous husband Jaswinder Singh, she performed marriage with Jagdeep Singh and two children born out of her previous wedlock had been residing in her second matrimonial home with Jagdeep Singh. She has further deposed that Nidhi and Ajay were adopted by her second husband but adoption deed was not prepared. For a valid adoption under the Hindu Adoption and Maintenance Act, 1956, it is not the requirement that adoption must be evidenced by a writing, therefore, absence of adoption deed is not sufficient to discard plea of Mamta that Nidhi and Ajay were adopted as children by deceased Jagdeep Singh. This apart, Jagdeep Singh is none else but paternal uncle (chacha) of Nidhi and Ajay. As such, Nidhi and Ajay being dependent upon income of Jagdeep Singh are entitled to get compensation. In the given scenario, deduction for personal expenses would be $1/4^{\text{th}}$, adopted by taking into consideration that four persons namely the widow, two children and mother of the deceased were dependent upon his earning, even if claim of his father is ignored. Addition in income for future prospects would be 40% as the deceased was less than 40 years of age. Multiplier and income assessed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 10,71,000/- [$5000 \times 12 \times 17 = 10,20,000 + 4,08,000(40\%) = 14,28,000 - 3,57,000(1/4^{\text{th}})$].

Compensation awarded under conventional heads is modified to the effect that claimants shall be entitled to Rs. 70,000/-, detailed hereunder :-

Loss of consortium to widow **Rs. 40,000/-**

Expenses on funeral **Rs. 15,000/-**

Loss of estate **Rs. 15,000/-**

Total compensation is Rs. 11,41,000/- and additional amount is Rs. 2,17,068/- (11,41,000-9,23,932) payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 197 days in filing the appeal, to be shared by claimants No. 2 and 3 namely Nidhi and Ajay in equal ratio, to be invested in fixed deposits till they attain age of majority or for a period of three years whichever is later.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No