

Sr. No. 226

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

FAO No.8355 of 2015 (O&M)

Date of Decision: 26.07.2018

Gurelal and another

... Appellants

Versus

Hem Kumar and others

... Respondents

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

Present:- Mr. Rohit Joshi, Advocate,
for the appellants.

Mr. Suresh Kumar Kaushik, Advocate,
for respondent Nos.1 and 2.

Mr. Aseem Aggarwal, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

CM No.26402-CII of 2015

In view of the averments made in the application and against the backdrop of the submissions advanced by counsel for the applicant(s), I find that sufficient cause has been shown to condone the delay of 195 days that has occurred in filing the accompanying appeal.

Prayer is allowed.

Delay condoned.

Application disposed of.

Main case

This is a claimants' appeal seeking enhancement of

compensation.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming adequate compensation on account of death of Govinda who died in a motor vehicle accident on 15.01.2014. Claimants were the parents of the deceased and it was stated that Govinda (since deceased) was proceeding on his motorcycle and was struck by a truck/tipper bearing registration No.HR-37-C-9484 being driven in a rash and negligent manner by Hem Kumar driver of the offending vehicle. Govinda is stated have suffered serious injuries in the accident and succumbed to the same. FIR No.15 dated 15.01.2014, under Sections 279, 337, 304-A IPC was registered on the same very day at Police Station Pinjore.

The claimants i.e. parents set up a case that their son was working as a Plumber and was earning Rs.10,000/- per month. The claim petition was contested by the owner as also the Insurance Company by filing separate written statements.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. Whether on 15.01.2014, Govinda died on account of sustaining injuries in the accident in question which took place on account of rash and negligent driving of truck bearing registration No.HR-37-C-9484, being driven by respondent No.1?OPP.***
- 2. If issue No.1 is proved, whether the claimants are entitled to any compensation, if so to what amount and from whom? OPP.***

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident in question, if so to what effect? OPR-3.

4. Relief.”

Insofar as issue No.1 is concerned, findings have been returned in favour of the claimants and it has been held that Govinda died on account of rash and negligent driving of the offending vehicle and which resulted in the accident.

Insofar as quantum of compensation is concerned, age of the deceased has taken to be 18 years and monthly income has been assessed at Rs.6000/- per month. The deduction of 50% has been allowed towards personal and living expenses of the deceased. 50% addition in income has been allowed towards future prospects and multiplier of 17 has been applied. That apart, an amount of Rs.25,000/- has been awarded towards funeral expenses and like amount i.e. Rs.25,000/- towards loss of estate. The total compensation awarded by the Tribunal is Rs.9,68,000/- along with interest @7.5% per annum from the date of filing of the claim petition till actual realization.

Since the only issue involved in the present appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also counsel representing the contesting respondent No.3-Insurance Company.

Case set up on behalf of the claimants was that their son Govinda (since deceased) was working as a Plumber and was earning Rs.10,000/- per month. Such claim has been discounted by

the Tribunal by adverting to the testimony of the father of the deceased PW-1 Gurelal and who had deposed that his son had studied up to 7th or 8th standard and did not possess any diploma or technical qualification to work as a Plumber. On the basis of guess work, the Tribunal has assessed the monthly income of the deceased to be Rs.6000/- per month.

In the considered view of this Court, it would not be essential for a person to possess a diploma or technical qualification to take upon the work as a Plumber. The accident had taken place on 15.01.2014. Counsel for the respondent Insurance Company would concede that as on the date of accident the minimum wages admissible to a skilled worker were Rs.5800/- per month approximately. Such minimum wages can only serve as a guideline. In the totality of the circumstances, the income of the deceased while working as a Plumber can be taken as Rs.7000/- per month.

The Tribunal has awarded an increase in income towards future prospects @ 50%. By applying the guidelines enumerated in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, since it was a case of the claimants themselves that deceased was self-employed, the percentage increase in income towards future prospects ought to have been taken as 40%. It is so directed.

Keeping in view the age of the deceased and by following the dictum laid down in case of ***Smt. Sarla Verma and***

others Vs. Delhi Transport Corporation and another 2009 (3)

RCR (Civil) 77, the multiplier would be applied 18 instead of 17. Even though counsel representing the respondent Insurance Company has contended that the Tribunal has awarded compensation under the heads of loss of estate, funeral expenses on the higher side, yet this Court would not be inclined to interfere in such regard keeping in view that the compensation awarded was under a beneficial Scheme of legislation.

In view of the discussion above, the amount of compensation admissible to the claimants is re-assessed as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.7000/- p.m.	Rs.7000 + 40% future prospects =7000+2800=Rs.9800/-
2.	50% deduction towards personal expenses of the deceased	Rs.9800-4900=4900/- Rs. 4900 x 12=58,800/-
3.	Compensation after applying multiplier of 18	Rs. 58,800 x 18=10,58,400/-
4.	Conventional Heads: i) loss of estate	Rs.25,000/- as awarded by the Tribunal
	ii)Funeral Expenses	Rs. 25,000/- as awarded by the Tribunal
	Total	Rs.11,08,400/-

The afore calculated revised compensation amount be released in favour of the appellants along with interest @ 6% from the date of filing of the present appeal till actual realization.

However, it is clarified that while calculating interest, the delay of 195 days in filing the appeal shall stand excluded.

Appeal is allowed in the aforesaid terms.

26.07.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No