

**Sr. No. 215
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.8384 of 2015 (O&M)

Date of Decision: 14.09.2018

Suner Bai and others

... Appellants

Versus

Neeraj Kumar and others

... Respondents

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

Present:- Mr. Gurinder Pal Singh, Advocate,
for the applicants-appellants.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-Insurance Company.

TEJINDER SINGH DHINDSA, J.(ORAL)

CM No. 26451-CII of 2015

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 82 days that has occurred in filing the accompanying appeal.

Notice in the application was issued.

Learned counsel representing contesting respondent Insurance Company has filed in Court today a reply to the application and the same has been taken on record. Copy has already been furnished to counsel opposite.

In view of the averments made in the application and submissions advanced by counsel, I find that sufficient cause has been shown for condonation of delay that has occurred.

Prayer is allowed.

Delay condoned.

Application disposed.

Main appeal

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed claiming compensation to the tune of Rs.20 lakhs on account of death of Sandeep Kumar in a motor vehicle accident that took place on 22.06.2013.

Claimants were the widow, two minor sons and aged mother of the deceased. Case set up on behalf of the claimants is that while Sandeep Kumar was travelling in a tempo bearing registration No. HR-43-B-1713, the same was being driven by respondent No.1-Neeraj Kumar in a rash and negligent manner and as a result thereof, the tempo dashed against another vehicle and turned turtle. Sandeep Kumar is stated to have suffered grievous injuries and succumbed to the same. FIR No.82 dated 23.06.2013, under Sections 279 and 304-A IPC was registered at Police Station Sadar Rewari. As per claimants, age of the deceased was 23 years and was employed with M/s ARCOTECH Limited, Bawal and was earning Rs.10,000/- per month. Claim petition having been contested, following issues were framed by the Tribunal:-

- 1. "Whether Sandeep Kumar son of Munshi Ram had died in a vehicular accident that took place due to rash or negligent driving of tempo***

bearing registration No. HR-47-B/1713 by respondent No.1 as alleged in the petition? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to compensation? If so to what amount and from whom? OPP

3. Whether the respondent proves the defences taken by it? OPR-3

4. Relief.”

Insofar as issue No.1 is concerned, findings were returned in favour of claimants and it was held that death of Sandeep Kumar occurred on account of injuries suffered in an accident due to rash and negligent driving of the insured/offending vehicle. Vide award dated 11.05.2015 passed by the Motor Accident Claims Tribunal, Rewari, a total compensation amount of Rs.12,59,000/-has been awarded in favour of the claimants 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 instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also Ms. Vandana Malhotra, Advocate representing the contesting respondent Insurance Company. Counsel for the appellants has raised a solitary submission that addition in income towards future prospects have not been granted by the Tribunal.

Per contra, learned counsel representing the Insurance Company would vehemently contend that the amount awarded is already on the higher side inasmuch as income of the deceased

has been assessed as Rs.7000/- per month in the light of record and evidence which actually was fabricated and such objection had been raised even during the proceedings before the Tribunal. Further contended that excessive amount of Rs.1 lakh has been granted towards loss of consortium.

Having heard counsel for the parties at length, this Court is of the considered view that the amount of compensation awarded by the Tribunal needs to be re-visited and re-assessed in the light of parameters laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77 and ***National Insurance Company Limited Vs. Pranay Sethi and others***, 2017 (4) RCR (Civil) 1009.

The accident took place on 22.06.2013. As per post-mortem report of the deceased Ex.P-5, age has been mentioned as 23 years. There being no evidence brought forth to the contrary age of the deceased has correctly been taken to be 23 years. Claimants had contended that deceased was working as a 'Helper' in ARCOTECH Limited, Bawal and under the aegis of a contractor Firm M/s Shiv Industrial Engineers.

Counsel for the respondent Insurance Company has pointed out a discrepancy that has come forth in the deposition recorded of the widow as opposed to PW-1 Lal Bahadur Singh who named the contractor Firm as M/s V.S.Enterprises.

Tribunal by relying upon the documentary evidence in the shape of service certificate Ex.P1, extract of the wage register Ex.P2 and attendance register at Ex.P3 has assessed the monthly

income of the deceased to be Rs.7000/- per month. Even if the contention raised on behalf of the respondent Insurance Company was to be accepted still the monthly income assessed would not require any intervention keeping in view the date of the accident. Concededly, even in relation to such point of time, the minimum wages admissible to an unskilled worker in the State of Haryana would be close to Rs.7000/- per month. As such the monthly income of the deceased as assessed i.e. Rs.7000/- per month is accepted and affirmed.

The Tribunal has rightfully made a deduction of 1/4th towards personal and living expenses of the deceased keeping in view that there were 04 dependents of the deceased.

Even the multiplier of 18 has been correctly applied to the multiplicand keeping in view the age of the deceased to be 23 years.

However, the Tribunal has completely overlooked the aspect as regards addition of income towards future prospects. Keeping in view the age of the deceased and that he was not on any permanent job increase in income @ 40% towards future prospects is awarded as per dictum laid down by the Apex Court in ***Pranay Sethi's case (supra)***.

Under the conventional heads, an amount of Rs.1,25,000/- has been awarded i.e. Rs.1 lakh for loss of consortium and sum of Rs.25,000/- towards personal expenses. By following the parameters laid down in ***Pranay Sethi's case (supra)***, a lump sum amount of Rs.70,000/- is awarded under the

conventional heads i.e. Rs.40,000/- loss of consortium, Rs.15,000/- loss of estate and Rs.15,000/- towards funeral expenses.

In view of the above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.7000/- p.m. (as assessed by the Tribunal)	Rs.7000/-
2.	Future prospects @ 40%	Rs.7000+2800=Rs.9800/-
3.	1/4th deduction towards personal and living expenses of the deceased	Rs.9800-2450=7350/- Rs. 7350 x 12=88,200/-
4.	Compensation after applying multiplier of 18	Rs. 88,200 x 18=15,87,600/-
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.16,57,600/-

The afore-calculated enhanced compensation amount be released to the claimants along with interest @ 6% per annum from the date of filing of the appeal till actual realization. The apportionment qua compensation amongst claimants and as directed by the Tribunal would stay intact.

Appeal is allowed in the aforesaid terms.

14.09.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No