

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-6630-2017 (O&M)
Date of Decision: 16.08.2018

Kamlesh Kumari & others

--Appellants

Versus

Daljit Singh & others

--Respondents

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

Present:- Mr. Sachin Ohri, Advocate for the appellants.

Mr. Rajesh K. Sharma, Advocate for
Mr. Vinod Gupta, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

CM-21512-CII-2017

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 237 days that has occurred in filing the appeal.

Keeping in view the averments made in the application and submissions made by counsel that in a claimants appeal seeking enhancement of compensation, the period of delay may be excluded while awarding interest in the eventuality of any enhanced compensation being granted, prayer is allowed.

Delay of 237 days in filing the appeal stands condoned.

Main Appeal

This is claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicle Act seeking compensation to the extent of Rs.60 lacs on account of death of Prem Sagar in an accident that took place on 29.12.2014. Claimants were the widow, son aged 18 years, two minor

daughters and widowed mother of the deceased.

Claimants had asserted that Prem Sagar (since deceased) while traveling in a TATA Sumo, was struck by a truck bearing registration no. PB-08-AJ-6491 being driven in a rash and negligent manner by Daljit Singh and on account of the multiple grievous injuries suffered, Prem Sagar expired.

The claim petition having been contested, the following issues were framed by the Tribunal:-

- “1. Whether Prem Sagar son of Amar Nath died in a motor vehicle accident due to rash and negligent driving of truck bearing registration no. PB-08-AJ-6491 driven by respondent no.1?OPP*
- 2. If Issue No.1 is proved, whether the claimants are entitled to grant of compensation, if so how much and from whom?OPP*
- 3. Whether the petition is not maintainable?OPR*
- 4. Whether the respondent no.1, the driver of the offending vehicle did not possess a valid and effective driving license at the time of accident?OPR-3*
- 5. Whether the accident had taken place due to rash and negligent driving of Tata Sumo bearing No.PB-01-A-3262 by its driver?OPR3*
- 6. Relief.”*

In so far as Issue No.1 is concerned, findings were returned in favour of the claimants and it was held that the accident had taken place on account of rash and negligent driving of the offending vehicle by Daljit Singh and which has resulted in the death of Prem Sagar.

So far as quantum of compensation is concerned, the Tribunal has assessed the income of the deceased to be Rs.2,75,000/- per annum.

The deduction of 1/3rd has been made from the income towards personal and

living expenses of the deceased. By ascertaining the deceased to be in the age bracket of 46 to 50 years, a multiplier of 13 has been applied. An amount of Rs.1 lac has been awarded to the widow towards loss of consortium and Rs.25,000/- towards funeral expenses. The total compensation amount computed is Rs.25,08,329/- and to be payable along with interest @ 6% per annum from the date of filing of the claim petition till actual realization.

Counsel representing the appellants has raised a two fold submission while seeking enhancement. It is contended that the aspect of increase in income towards future prospects has been completely overlooked. Second submission raised is that the Tribunal should have made a deduction of 1/4th from the income towards personal and living expenses of the deceased.

I have also heard counsel for contesting respondent-Insurance Company and who would vehemently contend that the compensation amount awarded by the Tribunal is just and adequate and does not warrant any interference.

Having heard counsel for the parties at length, I find sufficient merit in the contention raised by counsel representing the appellants.

The uncontroverted position is that the deceased was self employed and was in the age of 46 to 50 years. By applying the parameters/guidelines issued by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009*** the Tribunal ought to have granted 25% increase in income towards future prospects. The same is so directed.

Deceased left behind his widow, two minor daughters, a son and aged mother. Keeping in view the number of dependents, the deduction from income towards personal and living expenses, as per parameters laid down in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77* ought to have been 1/4th instead of 1/3rd. Same is accepted.

The amount of Rs.1,25,000/- awarded by the Tribunal towards loss of consortium and funeral expenses would stand scaled down to Rs.70,000/- as per judgement of the Apex Court in *Pranay Sethi's* case (supra).

In view of the above, the compensation amount is reassessed and calculated as under:-

Sr. No.	Head	Calculation
1.	Income as assessed by the Tribunal	2,75,000/- per annum 2,75,000÷ 12 =22,916/- per month
2.	25% increase in income towards future prospects	22,916+25%=28,645/-
3.	1/4 th deductions towards personal expenses of the deceased.	28,645 ÷ 4 = 7161/- 28,645-7161 = 21,484/-
4.	Compensation after applying multiplier of 13	21,484x12 = 2,57,808/- 2,57,808x13 = 33,51,504/-
5.	Conventional heads (loss of consortium, loss of estate, funeral expenses etc.)	70,000/-
6.	Total	33,51,504+70,000=Rs.34,21,504/-

The aforesaid enhanced compensation amount be released in favour of the claimants/appellants along with interest @ 6% from the date of filing of the claim petition and till actual realization. The apportionment as indicated by the Tribunal in the award dated 18.7.2016 would remain intact. It is, however, clarified that while calculating interest, the period of delay in filing the present appeal would stand excluded.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

16.08.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No