

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 5519 of 2018(O&M)
Date of Decision: 31.8.2018**

Jitender

---Appellant

versus

Tarawati and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Mohit Nehra, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 18653-CII of 2018

Prayer in this application is for condoning delay of 480 days in filing the appeal.

In view of averments made in the application supported by an affidavit of Jitender-applicant and arguments advanced by counsel for the applicant, application is allowed and delay of 480 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 5519 of 2018

The present appeal directs challenge against award dated 23.1.2017 passed by the Motor Accidents Claims Tribunal, Bhiwani (In short "the Tribunal") whereby compensation has been assessed on account of death of Man Singh in a motor vehicular accident that took place on 30.11.2014.

Counsel for the appellants would inform that the appeal has been preferred to assail the quantum of compensation assessed by the Tribunal. Counsel would argue that the Tribunal has assessed income of the deceased at Rs. 10,000/- per month without any tangible evidence but the minimum wage at the relevant time was approximately Rs. 6,000/- per month. Addition in income for future prospects, at best, can be 25% as against 30% allowed by the Tribunal. Compensation under conventional heads allowed by the Tribunal is liable to be restricted to Rs. 70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

I have heard counsel for the appellant, perused the paper book particularly the award.

The Tribunal, in para 18 of the award has noticed that as per plea of the claimants, the deceased was a labourer and used to sell milk and thereby earning Rs. 30,000/- per month as deposed by Tarawati PW1 widow of the deceased. In the application for compensation, plea of the claimants is that the deceased was a driver but they have not produced the driving licence. However, the Tribunal has assessed income of the deceased at Rs. 10,000/- per month by saying that in view of totality of circumstances, income at Rs. 10,000/- should be assessed. The Tribunal has not followed any criteria for assessing income of the deceased. In absence of claimants having led satisfactory much less tangible evidence on record with regard to avocation or/and income of the deceased, the Tribunal should have taken into consideration minimum wage available at the relevant time and assess the income accordingly. This Court is not oblivious of the fact that there is no bar to assess income more than

minimum wage available at the relevant time and minimum wage is not the sole criteria for assessing income of the deceased. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with the number of family members left behind by the deceased, interest of justice would be served if income of the deceased is assessed at Rs. 6000/- per month. Claimants shall be entitled to addition in income for future prospects @ 25% as the deceased was less than 50 years of age. Deduction for personal expenses allowed by the Tribunal is affirmed. The Tribunal has rightly applied multiplier of 13 for computing loss of dependency. In this manner, loss of dependency is calculated at Rs. 8,77,500/- $[6000 \times 12 \times 13 = 9,36,000 + 2,34,000 (25\%) = 11,70,000 - 2,92,500(1/4^{\text{th}})]$.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants are 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. 9,47,500/- and compensation assessed by the Tribunal is reduced to the extent of Rs.7,03,500/- $(16,51,000 - 9,47,500)$. However, compensation assessed by this Court shall be payable with interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that

compensation has been reduced without notice to the claimants. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they file an appeal for enhancement.

(Rekha Mittal)
Judge

31.8.2018.

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No