IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1164-1999 (O&M)
Date of decision : 09.09.2019

Reema Verma and others .... Appellants

Versus

Naresh Kumar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kanwal Goyal, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

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RAMENDRA JAIN , J (ORAL)

CM-5377-CII-2018

Through this application under Section 151 of the Code of Civil Procedure, prayer has been for condonation of 2498 days' delay in filing the application for restoration of appeal, dismissed for want of prosecution vide order dated 11.10.2010.

After hearing learned counsel for the applicant-appellants, the application is allowed and the appeal is restored to its original number and is listed on today's board.

CM-5376-CII-2018

Through this application again filed under Section 151 of the Code of Civil Procedure, prayer has been made for condonation of 97 days' delay in re-filing application for restoration of appeal.

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For the reasons mentioned in the application, the same is allowed.

Main case

Through this appeal, appellant-claimants have sought enhancement of compensation, modifying award dated 31.08.1998 of the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

Briefly, on 24.10.1996 Sanjay Verma (since deceased) as a pillion rider on a scooter, when reached near Dader Petrol Pump, Himachal Pradesh, respondent No.1 driving his truck bearing registration No.HP-33-2671 in a rash and negligent manner, while coming on the wrong side without giving any signal, struck against his scooter. As a result thereof, Sanjay Verma received multiple injuries. He was shifted to Civil Hospital, Mandi, where he succumbed to his injuries on the same day.

Being aggrieved, his widow, minor children and mother filed a claim petition under Section 166 of the Motor Vehicles Act before the Tribunal, who after holding trial awarded the compensation of Rs.4,72,800/- to the appellants alongwith interest @ 12% per annum from the date of filing of the claim petition, holding 20% contributory negligence of deceased.

Both the parties are *ad idem* that this appeal has to be decided in accordance with the principles laid down in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.**

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However, learned counsel for the appellant submits that the Tribunal below has erred in holding contributory negligence of deceased Sanjay Verma to the extent of 20%, ignoring the fact that he was not driving the scooter, rather was only a pillion rider. Therefore, no negligence could be attributed to him.

As per calculations furnished by learned counsel for the claimant-appellants, which is taken on record as Mark 'A', the total amount of compensation payable to claimant-appellants, according to **Pranay Sethi's case (supra)**, comes to ₹9,86,420/- less ₹4,72,800/-, already awarded by the learned Tribunal. Meaning thereby, the claimant-appellants are entitled to ₹5,13,620/- moreover and above the compensation awarded by the learned Tribunal.

Learned counsel for respondent No. 4-Insurance Company has not been able to controvert or point out any infirmity in the above calculations (Mark-A). Hence, the same is accepted.

Since, deceased Sanjay Verma was a pillion rider, therefore, this Court, in agreement with learned counsel for the appellants that no negligence could be attributed to deceased, set aside, finding of the Tribunal qua contributory negligence of deceased Sanjay Verma.

In view of the above, the claimant-appellants are held entitled to compensation of ₹5,13,620/- over and above the amount of ₹4,72,800/-already awarded by the learned Tribunal, vide Award

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impugned herein. Respondent No. 3-Insurance Company, through its counsel is directed to deposit the aforesaid enhanced amount of compensation before the learned Tribunal within one month from today, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till 11.10.2010 and further from today till deposit of the aforesaid enhanced amount for onward disbursement to the claimant-appellants, in proportion so arrived at by it, in accordance with law against proper receipt and identification. For the intervening period w.e.f. 12.10.2010 till today, appellants shall not be entitled to any interest on account of their own fault for not getting restored the instant appeal within time.

Learned counsel for the appellants has fairly conceded for not awarding interest for the aforesaid intervening period.

In case, aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @18% from the date of institution of claim petition till realization.

Disposed of.

(RAMENDRA JAIN)
JUDGE

09.09.2019
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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