

In the High Court of Punjab and Haryana at Chandigarh

FAO- 4544 of 2019(O&M)
Date of Decision: 22.7.2019

New India Assurance Company Limited

---Appellant

versus

Kamlesh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Kapoor, Advocate
for the appellant

Rekha Mittal, J.

CM No. 15147-CII of 2019

Prayer in this application is for condoning delay of 53 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 53 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO- 4544 of 2019

Challenge in the present appeal has been directed against award dated 13.2.2019 passed by the Motor Accidents Claim Tribunal, Kaithal (in short "the Tribunal") whereby compensation has been assessed on account of death of Phool Kumar in a motor vehicular accident that took place on 1.12.2017.

The Tribunal awarded Rs.18,65,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 9500/-
Deduction for personal expenses	1/4 th
Addition in income for future prospects	40%
Multiplier	15
Loss of dependency	Rs. 17,95,000/-
Conventional heads	Rs. 70,000/-

Counsel for the appellant has assailed the award primarily on two counts. It is argued that the Tribunal has treated the deceased as casual labour but assessed his income @ Rs. 9500/- per month as against minimum wage of approximately Rs. 8,000/-.

Another submission made by counsel is that interest has been awarded @ 9% per annum and that too from the date of accident in place of from the date of filing of claim application.

The plea of claimants is that deceased was a labour by occupation thereby earning Rs. 10,000/- per month. The Tribunal, in para 20 of the award, has held, reads thus:-

“So, it can be very well believed that the said Phool Kumar could well earn from the occupation of a labourer. It can be well speculated that such labour-work would not be guaranteed to a person like Phool Kumar, throughout the year, yet it would be difficult to assess as to how many days in a year such casual labourer would be out of work. So, the minimum monthly wages declared by the government, deserved to be applied as such, for assessing the loss of income on the death of said person. So, as per the instructions of Government of Haryana for the year 2017, it is assumed that monthly income of Phool Kumar would be Rs. 9500/- approximately.”

The minimum wage of an unskilled labour at the relevant time was approximately Rs. 8000/- per month. Accordingly, income of deceased assessed by the Tribunal is modified to the effect that claimants shall be entitle to loss of dependency at monthly income of Rs. 8000/-. Addition in income for future prospects, deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 15,12,000/-[8000 x12x 15= 14,40,000 +5,76,000 (40%)= 20,16,000 – 5,04,000 (1/4th)].

Compensation allowed under conventional heads is correct and affirmed.

In view of the above, total compensation is Rs. 15,82,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs. Rs. 2,83,000/-(18,65,000- 15,82,000).

The Tribunal has allowed interest @ 9% per month. There is no evidence on record as to what was the bank rate of interest at the time of filing of claim application or passing of award by the Tribunal. Hon'ble the Supreme Court affirmed grant of interest @ 9% per annum in **Sandhya Rani Debbarma and others vs. National Insurance Company Limited and another, 2016 (4) RCR (Civil) 465**. At the same time, the period of payment of interest would start from the date of filing of claim application viz-a-viz the date of accident, as has been held by the Tribunal.

In view of what has been discussed hereinabove, 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 respondents. The claimants-respondents 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 prefer an appeal for enhancement.

(Rekha Mittal)
Judge

22.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No