

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No.3599 of 2012 (O&M)

Date of decision: 25.03.2019

JAGJIT KAUR AND ORS

... Appellants

Versus

VIJAY KUMAR AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Chandan Deep Singh, Advocate for the appellants.
Mr. Pradeep Kumar, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.15671-CII of 2012

Prayer in this application is for condonation of delay of 213 days in filing the appeal.

In view of averments made in the application supported by an affidavit of Smt. Jagjit Kaur, one of the claimants coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 213 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Darshan Singh in a motor vehicular accident that took place on 12.12.2004.

The Tribunal has awarded Rs.3,92,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4000/-
2. Multiplier	11
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.3,52,000/-
5. Loss of consortium	Rs.5000/-
6. Loss of love and affection to claimants No.2 to 4	Rs.15,000/-
7. Funeral expenses	Rs.20,000/-

Counsel for the appellants would argue that the deceased was running the business of 'karyana' and had been filing income tax returns. An

application under Order 41 Rule 27 read with Section 151 CPC has been filed for placing on record copies of the income tax returns Annexures A1 to A4. It is submitted that as per the latest income tax return filed by the deceased in October, 2004, his annual income was Rs.62,500/- and accordingly the claimants are entitle to loss of dependency. In addition, it is argued that as application for compensation has been filed by the widow, two sons and daughter of the deceased, admissible deduction for personal expenses should be 1/4th. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, would argue that as the income tax returns were available for production before the Tribunal and there is no plea that these documents could not be produced despite exercise of due diligence, claimants are not entitle to lead additional evidence for producing income tax returns.

The claimants have filed application for additional evidence to produce on record the income tax returns Annexures A1 to A4. The provisions of Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation and the Tribunal has an obligation to assess just and reasonable compensation. The Tribunal, in the process of conducting inquiry can even examine witness by invoking Section 165 of the Evidence Act. Taking into consideration the aforesaid, failure of the claimants to produce the income tax returns at an appropriate stage of the proceeding before the Tribunal, cannot be allowed to stand in their way to produce these documents for the purpose of assessment of just and reasonable compensation. This apart, application filed by the claimants has already been allowed by this Court and the claimants have been permitted to produce on record documents Annexures A1 to A4.

As per the latest income tax return, annual income of the deceased was Rs.62,500/- as against Rs.48,000/- assessed by the Tribunal. Claimants shall be entitle to addition in income for future prospects @ 10% as the deceased was less than 60 years of age on the day of occurrence. The application for compensation has been filed by the widow and three children of the deceased. There is nothing on record suggestive of the fact that children of the deceased were not dependent upon income of Sh. Darshan

Singh. That being so, admissible deduction for personal and living expenses of the deceased would be 1/4th. The income tax returns record date of birth of the deceased to be 31.10.1947 and accordingly the deceased was about 57 years of age at the time of occurrence. The Tribunal has applied multiplier of 11 but the admissible multiplier is 9 in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. In this manner, loss of dependency is calculated at Rs.4,64,062/-[(62500 x 9) + (10% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.5,34,062/- and the additional amount is Rs.1,42,062/- (5,34,062 - 3,92,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 213 days in filing the appeal, to widow of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

25.03.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No