

**FAO No. 5768 of 2012 with
XOBJC-231-CII of 2014 (O&M)**

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

**FAO No. 5768 of 2012 and
XOBJC-231-CII of 2014 (O&M)
DECIDED ON: FEBRUARY 27, 2019**

TARO DEVI AND OTHERS

.....APPELLANTS

VERSUS

SURINDER BATRA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Sharmilla Sharma, Advocate
for the appellants.

Mr. G.S. Bhatia, Advocate
for respondent No.1.

Mr. Vishal Aggarwal, Advocate
for respondent No.2-Cross objectors.

AVNEESH JHINGAN, J (ORAL)

The award dated 10.04.2012 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') has been assailed by the legal heirs of Partap (deceased) seeking enhancement of compensation awarded under Section

166 of the Motor Vehicles Act, 1988 (for short 'the Act').

In the afore-said appeal the insurer of car bearing registration No. DL-8-CM-6928 (hereinafter referred to as the 'offending vehicle') has filed cross-objections along-with applications seeking condonation of delay of 162 days in filing and 20 days in re-filing the cross-objections.

The facts emanating from the record are on 23.06.2010, Partap was going to his office at village Uchani on bicycle. On his way near Zhilmil Dhaba on G.T. Road, his cycle was hit by offending vehicle. As a result of the impact, he fell down and sustained multiple injuries. He was taken to General Hospital, Karnal where he was declared dead. FIR No. 395, dated 23.06.2010 was registered at Police Station Sadar, Karnal on the statement of Dalip (PW-2).

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation of ₹18,24,600/- alongwith interest @7.5% per annum. As the claimants got compensation to the tune of ₹15,50,304/- under the ***Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006*** (for short 'the Rules'), the said amount i.e. ₹15,50,304/- was deducted and the claimants were found entitled to receive a compensation of ₹2,74,296/-.

In the claim petition filed under Section 166 of the Act, the date of birth of the deceased was proved to be as 28.02.1965. His age was 45 years at

the time of accident. He was working as Beldar in CCS Haryana Agricultural University, Regional Research Station, Uchani (Karnal). His salary was proved as ₹12,000/- per month. 30% future prospects were awarded; 1/4th deduction for self-expenses was made and multiplier of 13 was applied.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants contends that the deceased was 45 years old at the time of accident and the Tribunal erred in applying the multiplier of 13 instead of 14. His grievance is that only ₹15,000/- has been awarded under the conventional heads. No other issue has been raised.

Learned counsel for the respondents defended the award and resisted any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance.

In consonance with the decision of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121**, multiplier of 14 is to be applied, as the deceased falls in the age group of 41 to 45.

Having due regard to the decision of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009**, claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium.

In view of afore-said discussion, the compensation is re-calculated as under:

	Head	Compensation awarded
(i)	Monthly Income	₹ 12000/- per month
(ii)	Future prospects at 30%	₹ 3600/- per month
(iii)	Total Income	₹ 15,600/- per month
(iv)	Deduction of personal expenses	₹ 3900/- (i.e. 1/4 th of total income)
(v)	Multiplier	14 (as per age of deceased)
(vi)	Loss of income	11,700x12x14= ₹19,65,600/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
	Total Compensation awarded	₹20,35,600/-

The award dated 10.04.2012 is modified to the extent that amount of ₹2,74,296/- received by the claimants after deducting the amount received under the Rules is enhanced to ₹4,85,296/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

XOBJC-231-CII of 2014 (O&M)

The Cross-objections are accompanied with applications seeking condonation of delay of 162 in filing and 20 days in re-filing the cross-objections.

The only reason given in the application is that the driver of the offending vehicle was exonerated by the Additional Sessions Judge, Karnal, thereafter only, the cross-objections have been filed whereas, earlier the award was not challenged as there was no grievance of the insurer. Reason mentioned in the application is not satisfactory. The issue raised in the delay application

that the driver of the offending vehicle has been acquitted by Additional Sessions Judge, Karnal in criminal proceedings is not sufficient. The onus to prove the involvement of the offending vehicle and rash & negligent driving of the offending vehicle under the Act is not as onerous as in criminal proceedings. It is to be decided on principles of preponderance of probabilities. The Supreme Court in **Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504** held as under:

*“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]** are very pertinent.*

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

The Supreme Court in **Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao, 2002 AIR (SC) 1201**, held as under:-

Thus it becomes plain that the expression "sufficient cause" within the meaning of [Section 5](#) of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

It has been held that explanation of "sufficient cause" will depend upon the facts of the case. If no satisfactory explanation is coming forth, delay should not be condoned.

In the present case, no satisfactory explanation has been put forth for condonation of delay. It is evident that applicant was not vigilant in pursuing its remedies. No ground is made for condonation of delay.

The applications are dismissed and as a result thereof, the cross-objections are also dismissed being time barred.

FEBRUARY 27, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *No*