IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

FAO No. 10254 of 2014 (O&M)
Date of decision: 29.01.2019

Shanti and others *...Appellant*s

versus

Ram Kishan Yadav and others *...Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Rakesh Kumar Sharma, Advocate
for the appellant

None for the insurance company
-.-

Rekha Mittal, J. (Oral)

CM 28224 CII of 2012

Prayer in this application is for condonation of delay of 2870 days in filing the appeal.

Heard.

In view of the averments made in the application supported by affidavit of Smt. Shanti, one of the applicants, the application is allowed and delay of 2870 days in filing the appeal stands condoned, subject to condition that in case the appellants succeed in appeal, they will forego interest for the delayed period.

The application stands disposed of.

Main case

The claimants are in appeal seeking enhancement of compensation on account of death of Dharam Pal in a motor vehicular accident that took place on 10.06.2005.

The Tribunal has awarded compensation of Rs.3,75,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.3,000.00
Deduction for personal expenses	1/3rd
Multiplier	15
Loss of dependency	Rs.3,60,000.00
Loss of consortium	Rs.5,000.00
Transportation and obsequies	Rs.10,000.00

The plea of claimants is that the deceased was a driver on heavy goods vehicle with Tara Goods Carrier, Sewla Gwalior Road, Agra at salary of Rs.4,000.00 per month plus perks Rs.1500.00. Charul Arora (PW3), owner of Tara Goods Carrier was examined to prove avocation and income of the deceased. In examination-in-chief, the witness has deposed that Dharam Pal was a driver with Tara Goods Carrier and was paid Rs.4,000.00 per month and proved salary certificate Ex.P7. However, in cross examination, he stated that Dharam Pal was actually paid Rs.2,500.00 per month besides diet allowance of Rs.50.00 per day i.e. total amount of Rs.4,000.00 per month. The Tribunal in para 17 of the award has noticed that salary certificate does not mention about payment of daily allowance nor of payment of Rs.2,500.00 per month. Consequently, the Tribunal assessed income of the deceased at Rs.3,000.00 per month. I do not find an error much less infirmity in assessment of income made by the Tribunal when examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time. The Tribunal has rightly applied multiplier of 15 and 1/3rd deduction for personal expenses and the same are affirmed. The claimants shall be entitle to addition in income for future prospects at the rate of 40%. In this view of the matter, loss of dependency is calculated at Rs.5,04,000.00 (Rs.5,40,000.00 i.e. 3,000 x 12 x 15 + Rs.2,16,000.00 (40% addition) – Rs.2,52,000.00 (1/3rd (deduction)).

Under conventional heads, compensation awarded by the Tribunal is modified to the extent that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), admissible in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is calculated at Rs.5,74,000.00 (Rs.5,04,000.00 + Rs.70,000.00) and additional amount is Rs.1,99,000.00 (Rs.5,74,000.00 – Rs.3,75,000.00) payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 2870 days in filing the appeal, to be shared by claimants in the ratio of 20:30:50. The amount falling to the share of minors shall be invested in FDR till they attain the age of majority or for a period of three years, whichever is later.

In view of the above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

29.01.2019
mohan bimbra