IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210 FAO No.1674 of 2014 (O&M)

Date of decision: 16.01.2019

SAROJ MISHRA & ANR ... Appellants

Versus

LOVEJEET SINGH & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ravindra Singh, Advocate for
Mr. Puneet Gupta, Advocate for the appellants.
Mr. Mukesh K. Bhatnagar, Advocate for respondents No.1 & 2.
Mr. Sanjeev K. Arora, Advocate for respondent No.3.

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<u>REKHA MITTAL, J. (Oral)</u>

CM No.5846-CII of 2014

Prayer in this application is for condonation of delay of 147 days in filing the appeal.

In view of averments made in the application supported by an affidavit of Smt. Saroj Mishra, 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 147 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 Komal Mishra in a motor vehicular accident that took place on 05.05.2010.

The Tribunal has awarded compensation of Rs.1,39,600/-, detailed hereunder:-

1. Annual income of the deceased	Rs.14,400/-
2. Multiplier	18
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.1,29,600/-
5. Expenses on funeral	Rs.5000/-
6. Loss of estate	Rs.5000/-

The plea of claimants is that Komal Mishra was earning Rs.8000/- per month as she was working as a teacher in a private school and has also been doing tution work. The Tribunal, in para 15 of the award, has noticed that salary certificate Ex.C3 would show that she (Komal Mishra) was working as a helper and not a teacher and her monthly income was

Rs.1200/-. Saroj Mishra, mother of the deceased would depose that Komal Mishra was 10+2 but no document was produced on record with regard to educational qualification of the deceased. The claimants examined Kailash Kumar CW2 and Rajinder Kumar CW3 to prove that Komal Mishra was taking tuition classes of children who were studying in 10th, 9th, 8th and 3rd class.

The first plea of the claimants that the deceased was working as a teacher in a private school gets falsified and belied from their own document i.e. salary certificate Ex.C3. The claimants have not produced any document with regard to educational qualification of the deceased. It is highly difficult to believe that a person who has just passed 10+2 examination would be giving coaching to students of class 10th, 9th and 8th. In the given circumstances, the Tribunal has rightly refused to rely upon testimonies of Kailash Kumar and Rajinder Kumar with regard to Komal Mishra holding any coaching classes.

The Tribunal has rightly assessed annual income of the deceased at Rs.14,400/- on the basis of salary certificate Ex.C3. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.1,81,440/- [(14,400 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.30,000/-, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.2,11,440/- and the additional amount is Rs.71,840/- (2,11,440 - 1,39,600), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 147 days in filing the appeal, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

16.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No