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

**FAO No. 150 of 2015 (O&M)
Date of Decision: 05.04.2019**

Raj Rani and others

......Appellants

versus

Anand Pal and others

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Raj Kumar Rana, Advocate,
for the appellants.

Respondents no. 1 and 2 *ex parte* vide order dated 20.01.2017.

Mr. Subhash Goyal, Advocate,
for respondent no. 3.

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<u>AMOL RATTAN SINGH, J. (ORAL)</u>

<u>CM No. 496-CII-2015</u>

By this application condonation of a delay of 294 days in filing the accompanying appeal is sought by the applicants who were claimants before the Motor Accident Claims Tribunal as has passed the Award impugned in the accompanying appeal.

It is stated in the application that after the Award was passed on 06.09.2013, a certified copy thereof was applied for on 20.09.2013 and was prepared on the same date, but when the applicant-appellants visited the office of their counsel to collect the papers to enable them to file an appeal, they were told that he had already handed over the papers to a counsel of this court, who would file the appeal accordingly.

Thereafter, when no decision was received on any such appeal for a considerably long time, the applicants again visited the office of their counsel in the lower court again on 20.09.2014, and came to know that the papers were lying in his office, after which they were collected and the appeal filed. The application is seen to be accompanied by the affidavit of the 2nd applicant, who is the son of the 1st appellant.

The accompanying appeal being one filed by claimants before the Tribunal seeking compensation for the death of the son of the appellants, I would not be disinclined to disbelieve what is stated in paragraph 2 of the application and consequently the delay of 294 days in filing the accompanying appeal, which has remained pending since 2015, is condoned.

The application stands disposed of.

FAO No. 150 of 2015

1. By this appeal, enhancement of the compensation awarded to the appellants by the Motor Accidents Claims Tribunal, Ambala, vide the impugned Award, is sought, essentially on two grounds, the first being that no compensation has been awarded (for the unfortunate death of the son of the appellants, Sunny, who was 23 years old), towards loss of future prospects of an increased income, and that only Rs. 25,000/-has been awarded on account of transportation and last rites, with nothing having been awarded towards loss of consortium and loss of estate.

2. The facts giving rise to the filing of the claim petition by the appellants herein, as also the widow of the deceased who was the first claimant before the Tribunal but is shown to be a proforma respondent herein (respondent no. 4), are that, as per the claimants, when the aforesaid Sunny, along with one Inderjeet, was coming from Delhi to Ludhiana on 23.10.2011,

in a bus bearing registration no. NL-02-B-2084, with the said Inderjeet in fact driving the bus (stated to be on the correct side of the road), at about 5:30 a.m. when they reached near Nanhera on the G.T. Road at Ambala Cantt., a truck bearing registration no. HR-69-A-0976, being driven by respondent no. 1 herein in a rash and negligent manner, suddenly turned towards the Nanhera side,without giving any indication, due to which the bus hit against the truck, with the son of the appellants having unfortunately suffered multiple injuries and having died at the spot.

His postmortem examination was conducted in the Civil Hospital, Ambala, with an FIR also having been registered, arraigning therein respondent no. 1 (Anand Pal) as an accused, alleging the commission of offences punishable under Sections 279/304-A/337/427 of the IPC.

3. Further, the claimants had averred that they had spent Rs. 50,000/- on the last rites of the deceased, plus Rs. 10,000/- on the transportation of his body.

It was further stated that they were wholly dependent on his income, which was claimed to be Rs. 10,000/- per month and consequently, they sought a compensation of Rs. 18,00,000/- from the respondents, i.e. the driver, owner and insurer of the aforementioned truck.

4. Respondents no. 1 and 2, i.e. the driver and owner of the vehicle, did not respond to notices issued and were therefore proceeded against *ex parte* by the Tribunal, with the insurer of the vehicle, i.e. respondent no. 3 herein, having filed a written statement taking the usual objections of the driver not carrying a valid driving licence and there being a breach of the terms and conditions of the insurance policy thereby absolving the insurer from paying any compensation.

Further, the factum of the accident having taken place itself was denied, it also having been stated that a false FIR had been registered by the police in collusion with the claimants.

Lastly, it was also contended that the accident, if any had taken place, was due to the rash and negligent driving of the driver of the bus, i.e. Inderjeet Singh, and not of the driver of the truck insured by the insurance company.

5. Upon the aforesaid pleadings filed, the following issues were framed by the Tribunal:-

> *"1. Whether on 23.10.2011 near Nanhera G.T.Road, Ambala Cantt, any accident took place due to rash and negligent driving of a Truck Tata 1109 bearing registration no. HR-69-A-0976 being driven by respondent no. 1? OPP*
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> *2. If issue no. 1 is proved, whether Sunny received injuries on 23.10.2011 and died in the accident? OPP*
>
> *3. If issues number 1 and 2 are proved whether claimants are entitled for any compensation, if so to what amount and from whom? OPP*
>
> *4. Whether the petition is not maintainable in the present form? OPR*
>
> *5. Whether the person who was driving the vehicle in question was not holding a valid and effective driving licence at the time of alleged accident? OPR-3*
>
> *6. Relief."*

6. The Tribunal, after considering the evidence led before it, including the testimonies of the present appellants and Rajesh Kumar, Criminal *'Ahlmad'* (in respect of the criminal proceedings then pending against

respondent no. 1), and the aforementioned Inderjeet, eventually came to a conclusion that the accident was caused to the negligent driving of respondent no. 1, which finding is not under challenge by way of any appeal filed by the respondents.

Hence, nothing further is required to be stated by this Court on that issue, nor on issue no. 2, i.e. whether the deceased had died as result of the injuries sustained by him in the accident or not.

7. As regards the issue on quantum of compensation, i.e. issue no. 3, the learned Tribunal found that there was no documentary proof whatsoever with regard to the deceased earning Rs. 10,000/- per month and consequently, his monthly income was taken to be Rs. 5,000/- per month (or Rs. 60,000/- per annum), from which amount a deduction of 1/3rd was applied towards the personal expenses of the deceased (had he remained alive), with the loss of annual dependent income to the claimants found to be therefore Rs. 40,008/-, which was rounded off to Rs. 40,000/- per annum.

The deceased being 23 years of age, a multiplier of 18 was applied, thereby bringing the loss of income to the dependents to be Rs. 7,20,000/-, to which a sum of Rs. 25,000/- was added on account of transportation and last rites as already noticed.

Thus, on the total compensation of Rs. 7,45,000/-, interest @ 7.5% per annum was also awarded, running from the date of the filing of the claim petition, till the date of realization of the amount.

8. Before this court, learned counsel for the appellants submits that the Tribunal firstly has wholly erred in not awarding any amount towards loss of future prospects of an increased income, and towards loss of consortium and loss of estate, even in terms of the ratio of the judgment of the Supreme

Court in **National Insurance Company Limited v. Pranay Sethi and others** 2017 (4) RCR (Civil) 1009.

9. Mr. Subhash Goyal, learned counsel for respondent no. 3, very fairly submits that as regards the ratio of the aforesaid judgment is concerned, naturally, he can have no objection to the petition being allowed strictly in those terms.

10. That being a very fair statement made, in terms of what has been held by the Supreme Court, it is first to be noticed that as regards the monthly income assessed by the Tribunal, even learned counsel for the appellants could not point out that the said income has been incorrectly assessed in any manner, the deceased having died in the year 2011.

However, the deceased being 23 years of age, in terms of what has been held in **Pranay Sethis'** case (supra), 40% of that income is to be added towards loss of future prospects of an increased income, i.e. a sum of Rs. 2,000/- is to be added to Rs. 5,000/-, thereby bringing the income of the deceased (including loss of future prospects thereof) to be Rs. 7,000/-, from which a 1/3rd amount is to be deducted towards the personal expenses of the deceased had he remained alive, such amount being Rs. 2,333/-.

Hence, the loss of monthly income to the heirs of the deceased, i.e. the appellants herein and respondent no. 4, comes to Rs.4,667/- rounded off to Rs.4,700/- per month or Rs. 56,400/- annually.

The deceased being 23 years of age, a multiplier of 18 is to be applied to that sum, the said multiplier being the same as was correctly applied by the Tribunal, with the total loss of income to the appellants and respondent no. 4 therefore being Rs. 10,15,200/-.

To that sum, Rs. 40,000/- is to be added, towards loss of consortium (such sum being for the consort, i.e. the widow, as also on account of loss of "filial consortium" as defined by their Lordships in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others** 2018 (4) RCR (Civil) 333).

Further, Rs.15,000/- is to be awarded towards last rites and Rs.15,000/- towards loss of estate, thereby bringing the total compensation payable to the appellants and respondent no. 4 to be Rs.10,85,200/-, which is Rs.3,40,200/- more than what was awarded by the Tribunal.

On that sum, 7.5% interest, per annum, as was awarded by the Tribunal is again awarded.

However, respondent no. 4, i.e. the widow of the deceased not being in appeal and there being no averment seen to be made that any children were born to the couple, it is considered appropriate that the enhanced sum be paid to the appellants alone, i.e. the parents of the deceased, with however, liberty to respondent no. 4 to move an appropriate application for proper apportionment of the enhanced compensation awarded in this appeal, if she has remained unmarried.

11. Mr. Goyal however has submitted that since the appeal has been filed 294 days after limitation for doing so expired, the interest to be paid by the respondents should not include that period.

That contention is considered to be absolutely reasonable and consequently, while calculating interest as has been awarded hereinabove, on the enhanced amount, a period of 294 days shall be subtracted by the insurance company/execution Court, as the case may be.

The appeal is allowed in the aforesaid terms, with the costs of this appeal to be borne by the parties themselves, the cost awarded by the Tribunal being maintained as it is.

April 05, 2019 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes