

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

FAO-1490-2016(O&M)

Date of decision:-2.9.2019

National Insurance Company Ltd.

...Appellant

Versus

Jaswant Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.C. Kapoor, Advocate
for the appellant.

Mr.Nitin Mittal, Advocate
for respondents No.1 and 2.

Mr.Rakesh Gupta, Advocate
for respondent No.7.

H.S. MADAAN, J.

Though today the case was fixed for orders, however Mr.Nitin Mittal, Advocate for respondents No.1 and 2 and Mr.Rakesh Gupta, Advocate for respondent No.7 have appeared and requested that they be allowed to address arguments. Necessary permission has been granted to them and arguments advanced by them have been heard.

CM-5257-CII-2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 277 days in filing the appeal.

Though, the request is being opposed on behalf of the

respondents but I find sufficient grounds to condone the delay since it is always desirable to decide a *lis* on merits rather than non suiting a party on a technical ground.

Therefore, the application is allowed and delay of 277 days in filing of the appeal stands condoned.

FAO-1490-2016(O&M)

Briefly stated, facts of the case as per version of the claimants are that on 12.3.2012, Karamjit Singh, Cleaner of truck/Tipper bearing registration No.HR-68A-1022 after loading the crusher (Bajri) from Banur in that truck/tipper was travelling in that very vehicle, which was being driven by respondent No.1 – Jasbir Singh; that Karamjit Singh was travelling in that vehicle as per instructions of respondent No.3 – Vinay Sobti owner of the truck during the course of employment with him; at about 5:30 a.m., when the said vehicle being driven in a rash and negligent manner at a very high speed reached at Lovely Dhaba within the area of village Khaloure on Banur – Ambala road, then a truck bearing registration No.HR-37A-5679 was parked on the metalled portion of the road with its face towards Ambala side; no precautions like placing of bricks, stone, branches of tree, safety cones, reflectors, burning of fire near it had been taken, which might have indicated to the road users that the truck was parked there with all the wheels on the metalled road; Jasbir Singh – respondent No.1 while driving his truck/tipper in a rash and negligent manner hit against the rear portion of the stationary truck No.HR-37A-5679, resultantly the occupants of truck/tipper No.HR-68A-1022 suffered multiple and grievous injuries; Karamjit Singh had suffered

grievous head injury also; he was taken to PGI, Chandigarh where he was declared dead; that the accident had taken place on account of rash and negligent driving of truck-tipper No.HR-68A-1022 by respondent No.1, owned by respondents No.2 and 3 and insured with respondent No.4 – National Insurance Company Ltd. as well as on account of wrong parking of truck No.HR37A-5679 on the metalled portion of the road by respondent No.5, owned by respondent No.6 and insured with respondent No.7; that an FIR No.19 dated 12.3.2012 for the offences under Sections 279 and 304-A IPC was registered with Police Station Banur, District Mohali.

According to the claimants, Smt.Jaswant Kaur widow of Sh.Jasmer Singh aged about 45 years mother and Paramjit Singh, aged about 22 years brother of deceased Karamjit Singh, the deceased was aged about 19 years and was working as a Cleaner with Vinay Sobti on his truck/tipper; that he was getting Rs.8,000/- as salary; that the claimants were totally dependent on the income of the deceased, therefore compensation of Rs.25 lakhs be awarded to them.

On getting notice, all the respondents had put in appearance and offered a contest.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 19.2.2015, learned Motor Accidents Claims Tribunal, SAS Nagar (Mohali) allowed the claim petition partly and awarded compensation of Rs.14,46,000/- to the claimants, in equal shares along with interest @ 6% per annum from

the date of filing of the petition till realization of the amount, observing that since the trucks were insured with respondents No.4 and 7, respectively, those companies were liable to indemnify the owners of the respective trucks. However, respondent No.4 was given a right of recovering the amount to be paid, from respondent No.2.

Such award left the Insurance Company (respondent No.4) aggrieved and it has knocked at the door of this Court praying that the appeal be accepted and the award under challenge be set aside.

Notice of the appeal was issued to the respondents and respondents No.1, 2 and 7 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

On appreciation of evidence produced before it, the Tribunal has found the drivers of both the trucks involved in the accident responsible for the accident by their rash and negligent acts; further respondent No.1 has been found to be not holding a driving licence so as to drive heavy transport vehicle on the date of accident, whereas respondent No.5 – Amarjit Padhir @ Amardeep Poddar was found to have a valid and effective driving licence at the time of accident. For the purpose of assessing the compensation, the Tribunal assessed the income of deceased to be Rs.6,000/- per month, using the yardstick of wages paid to a labourer at relevant time. The Tribunal has granted increase of 50% towards future prospects, whereas as per authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, increase of only 40% should have been given. Doing

that the monthly income of the deceased comes out to be (Rs.6000 + 2400) Rs.8,400/-. Since the deceased was a bachelor, 50% of the income was rightly deducted by the Tribunal towards his personal and living expenses. As such the dependency of claimants comes out to Rs.4,200/- per month, annual dependency Rs.4200 x 12 = Rs.50,400/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.50,400 x 18 = 9,07,200/-.

The Tribunal has granted Rs.50,000/- each to the claimants under the head loss of love and affection, Rs.25,000/- as loss of estate and Rs.25,000/- towards funeral expenses. However, in view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. Thus, the total compensation comes out to Rs.9,07,200 + 30,000 = 9,37,200/-.

The Tribunal has wrongly awarded compensation of Rs.14,46,000/-. The same is reduced to Rs.9,37,200/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.,9,37,200/- Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company at the earliest. Otherwise, the appellant – insurance company can recover the same by filing an execution application before the Motor

Accidents Claims Tribunal, SAS Nagar (Mohali).

With such modification, the appeal is allowed partly with costs.

2.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No