IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 15920 CII of 2016 in/and
FAO No. 4628 of 2016 (O&M)
Date of decision: 18.9.2019

Smt. Manpreet Kaur and others

...Appellants

Versus

Mukhtiar Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ishan Cooner, Advocate, for
Mr. JS Cooner, Advocate,
for the appellants.

Mr. Lalit Garg, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

CM No. 15920 CII of 2016

This is an application that has been filed under Section 5 of the Limitation Act seeking condonation of delay of 194 days in filing the appeal.

It is contended that the appellants/claimants are widow, minor children and widowed mother of the deceased and were unaware of the procedure involved in preferring an appeal.

Learned counsel for the Insurance Company opposes the condonation of delay stating that adequate reasons have not been given for condoning the delay.

I have heard learned counsel for the parties and find that proceedings under the Motor Vehicle Act are in the form of beneficial legislation and, therefore, cannot oust the claim of the widow and minor children of the deceased on technicality when sufficient reasons have been given in the application. However, while allowing this application, it is also held that the claimants would not be entitled to any interest for the delay period of filing the appeal i.e. for a period of 194 days.

C.M. stands disposed of.

Main case

1. This appeal seeks to challenge the award dated 14.7.2015 passed by the Motor Accident Claims Tribunal, Moga, whereby the appellants herein have been allowed compensation of ₹11,90,000/- on account of death of Lakhwinder Singh.

2. In brief, the facts are that on 10.11.2014 deceased Lakhwinder Singh, along with one Jaswant Singh, was going from Harike to Sarhali by a car bearing registration No. PB-05/N-0130 and when they were about to reach Petrol Pump at Moga to Amritsar road, they were hit by a Swift car bearing registration No. PB-05/R-0313, being driven by respondent No.1 in rash and negligent manner. The impact of the accident was such that Lakhwinder Singh died on the spot. It was alleged that the accident took place due to rash and negligent driving of respondent No.1 and consequently FIR 166 dated 10.11.2014 under Sections 304-A, 279, 337, 338, 427 IPC came to be lodged with the Police Station, Harike. With these averments, claim petition was filed by the widow, mother and the children of the deceased claiming that they were fully dependent on the deceased for

their maintenance and livelihood. It was claimed that the deceased was an agriculturist and owned six acres of agricultural land and was earning ₹6,75,000/- per annum.

3. The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action had accrued etc. Issues were framed and thereafter evidence was led by the parties in order to substantiate their respective claims.

4. After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence produced before it allowed compensation of ₹11,90,000/-, which has been now challenged in the instant appeal.

5. Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the same deserves to be enhanced. It is submitted that the Tribunal has not properly considered the evidence produced by the claimants with regard to the income of the deceased from the agricultural produce and has assessed his income at ₹8,000/- per month. It is further submitted that the Tribunal has not awarded any amount on account of future prospects. It is also submitted that multiplier of 16 ought to have been applied instead of 15 as the deceased was 32 years old.

6. On the other hand, learned counsel appearing on behalf of respondent No.2 submits that adequate compensation has already been allowed to the appellants by the Tribunal and, therefore, there is no occasion

for enhancement of the same.

7. The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 37 years of age and was earning ₹8,000/- per month. While scrutinizing the evidence produced to prove the income of the deceased, the Tribunal observed as under:-

> "*In this context, PW-2 Manpreet Kaur has admitted in her cross-examination that she could not produce any proof of income of her late husband Lakhwinder Singh. Similarly, receipts/J-Form Ex. P.3 to Ex. P7 produced by the claimants regarding agricultural produce sold by Lakhwinder Singh do not conclusively establish the precise income of deceased Lakhwinder Singh. Unless and until the claimants produced the Income Tax Return filed by Lakhwinder Singh, it would not be possible to fix his monthly income on the basis of evidence adduced on the record. It is pertinent to mention here that death of Lakhwinder Singh would not stop the agricultural income of the produce from the land owned by Lakhwinder Singh. LRs of Lakhwinder Singh would be able to produce crops from the said land, therefore, there would be no decrease in the income from the agricultural land. Consequently, the court assesses monthly income of Lakhwinder Singh as that of a skilled labourer, which shall be Rs. 8,000/- per month*"

8. From the evidence so produced, it is evident that the claimants were not able to establish on the record that the deceased was earning ₹6,75,000/- per annum and thus the Tribunal has rightly taken the income of the deceased at ₹8,000/- as a skilled labourer. The Tribunal deducted 1/4th towards personal expenses and living of the deceased. With regard to the age of the deceased, Manpreet Kaur (PW-2) in her statement has stated that her husband Lakhwinder Singh was 32 years of age at the time of his death.

No evidence has been adduced either by the owner of the offending vehicle or the Insurance Company to rebut the age of the deceased as claimed by PW-2. Therefore, the age of the deceased is taken as 32 years and as such multiplier of 16 would be applied. Apart from that, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.** Therefore, compensation payable to the appellants is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Lakhwinder Singh
(ii)	Date of accident	10.11.2014
(iii)	Age of the deceased	32 years
(iv)	Monthly income of the deceased	₹ 8,000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 8000+₹3200)= ₹ 11200/- per month
(vi)	1/4th of (v) above deducted towards personal expenses	(₹ 11200-₹2800) = ₹ 8400/- per month
(vii)	Compensation calculated after applying the multiplier of 16	(₹8400X12X16) = ₹ 16,12,800/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹16,82,800

9. As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the appellants/claimants shall be ₹ 16,82,800/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount

of compensation as per the award of the Tribunal. However, as already held, the appellants would not be entitled to interest for the days there was a delay in filing of the appeal.

18.9.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No