IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6856 of 2015 (O&M)
Date of decision: 26.02.2019

Smt. Kamlesh (Deceased) thr her LRs Etc. ... Appellants

Versus

Bhagat Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vipul Sharma, Advocate/Amicus Curiae
for the appellants.

Mr. Sukhdarshan Singh, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

CM No.21344-CII of 2015

Prayer in this application is for condoning delay of 7615 days in filing the appeal.

Counsel for the applicants-appellants, in line, with the averments raised in the application would argue that as there was no adult male member in the family to file an appeal and the family had been passing through serious financial crisis on account of sudden death of Sh. Raj Kumar Bansal, only bread winner of the family, delay in filing the appeal is not intentional much less malafide. It is further argued that even the second parent of children of Sh. Raj Kumar Bansal died on 07.09.2004 and they were rendered orphans. It is argued that delay in filing the appeal should not be allowed to enure to benefit of the insurance company by escaping liability to pay just and reasonable compensation nor it should cause adverse effect qua claim of children of the deceased who are left in lurch because of death of their father at a young age and thereafter they have lost their mother on 07.09.2004. Counsel would state that he has the instructions to say that the appellants would not press for grant of interest for the period of delay in case the appeal is decided on merits and compensation is enhanced.

Counsel representing the insurance company, on the contrary, has contested the plea for condonation of delay on the premise that Smt. Kamlesh widow of Raj Kumar Bansal remained alive for 10 years since the award was passed by the Tribunal but she did not bother to file an appeal for herself as well as on behalf of minors seeking enhancement of compensation. It is further argued that even children of the deceased stated to be minors at the time of filing claim application attained majority long before filing of the present appeal in the year 2015 and as such they cannot take advantage of their minority for entertaining their claim.

Be that as it may, there is nothing on record suggestive of the fact that delay in filing the appeal is either intentional much less actuated by malice. No third party interest has been accrued during the intervening period to say that in case the appeal is allowed, the same would be prejudicial to interest of a that party. It has been consistently held by the Courts that liberal and pragmatic approach is required to be adopted for condoning delay particularly in the circumstances when the claim is for grant of compensation and examined in the light of legislative intent that the Tribunal has an obligation to assess just and reasonable compensation. This apart, no prejudice shall be caused to the insurance company in case delay is condoned in the face of concession recorded by counsel for the appellants that the claimants would forgo interest for the period of delay in case the compensation is enhanced.

Hon'ble the Supreme Court in **Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (dead) by LRs, 1979(4) SCC 176** has held, quoted thus:-

> If a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

Keeping in view the above, interest of justice commands that delay in filing the appeal is condoned subject, however, to the condition that appellants shall not be entitle to interest for the period of delay of 7615 days in filing the appeal, in case their claim for enhancement is found meritorious.

CM No.21345-CII of 2015

Prayer in this application is for impleading legal representatives (in short “LRs”) of Kamlesh-appellant No.1.

In view of averments made in the application supported by an affidavit of Arun Kumar Bansal, one of the claimants and arguments advanced, application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as LRs of Kamlesh-appellant No.1 (since deceased), subject to just exceptions, for the purpose of present lis only.

Disposed of accordingly.

Amended memo of parties is taken on record.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Raj Kumar Bansal in a motor vehicular accident that took place on 29.05.1993.

Kamlesh (since deceased) lost her husband, claimants No.2 to 4 their father and claimant No.5 her son when the deceased was barely 40 years of age and working as a teacher in Kendriya Vidyalaya, Bathinda.

The Tribunal has awarded Rs.10,02,240/- (rounded off to Rs.10,00,000/-), detailed hereunder:-

1. Monthly income of the deceased	Rs.5820/-
2. Personal and living expenses	Rs.600/-
3. Multiplier	16
4. Loss of dependency	Rs.10,02,240/-

Counsel for the appellants would argue that claimants are entitle to addition in income for future prospects and adequate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, has supported assessment made by the Tribunal.

Perusal of the award particularly para 10 makes it evident that the claimants examined Harsharan Singh, Lower Division Clerk of the aforesaid school AW2 and he produced service book and as per the record, deceased was drawing Rs.5075/- per month. He passed departmental examination for appointment as Principal, held in September, 1991. However, the salary certificate Ex.A3 spells out that he was drawing an amount of Rs.4817/- per month. The Tribunal has also taken into consideration income of the deceased @ Rs.1000/- per month from tuition work.

Counsel for the appellants has expressed his inability to produce a copy of salary certificate Ex.A3 for perusal and appreciation by the Court. However, keeping in view the above, income of the deceased assessed by the Tribunal is affirmed. Claimants shall be entitle to addition in income for future prospects @ 30%, as the deceased was 40 years of age and there is no clear evidence with regard to his date of birth to prove that he was less than 40 years. Accordingly, admissible multiplier would be 15.

The application for compensation has been filed by the widow, three children and mother of the deceased. In the given circumstances, deduction for personal expenses would be 1/4th. In this manner, loss of dependency is calculated at Rs.10,21,410/- [(5820 x 12 x 15) + (30% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.50,000/-, detailed hereunder:-

1. Loss of consortium Rs.30,000/-

2. Funeral expenses	Rs.10,000/-
3. Loss of estate	Rs.10,000/-

Total compensation is Rs.10,71,410/- and the additional amount is Rs.71,410/- (10,71,410 - 10,00,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 7615 days in filing the appeal, payable to children of the deceased.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

26.02.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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