

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

F.A.O. No. 7750 of 2015 (O&M)

DATE OF DECISION :- November 18, 2019

Smt. Asgari and others

...Appellants

Versus

Farid and others

...Respondents

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

Present:- Mr. Sunita Gupta, Advocate for the appellants.

Mr. Vishal Sharma, Advocate for respondent No. 3.

C.M. No. 24340-CII of 2015 and
C.M. No. 24339-CII of 2015

There is an application for condonation of delay of 366 days in filing of the appeal and another application for condonation of delay of 101 days in re-filing of the appeal. The application are being opposed on behalf of respondent No.3-Insurance Company.

However, I find that Section 166 is a piece of welfare legislation enacted by the Parliament to provide compensation to the legal heirs/legal representatives of persons loosing their lives or the person suffering injuries in motor vehicular accidents and the claimants would not have gained any advantage by belated filing of the appeal. I find that it would be proper and appropriate if the delay of 366 days in filing of the appeal and 101 days in re-filing of the appeal is condoned, as such the

applications are accepted. The delay stands condoned.

F.A.O. No. 7750 of 2015

Briefly stated the facts of the case are that on account of death of Haijat, in a motor vehicular accident which took place on 12.2.2012 at about 10.00 P.M., in the area of near Village Dhidra, statedly on account of rash and negligent driving of motorcycle bearing registration No. HR-74-A-0273 by respondent No. 1 Farid Singh, legal representatives of deceased namely his widow Smt. Ashgari, minor sons namely Aadil, Nasir and Hashim and minor daughters Basima and Rajiya had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Farid-driver, Mubarik-owner and Shri Ram General Insurance Co. Ltd, Gurgaon-insurer of motorcycle bearing registration No. HR-74-A-0273 (hereinafter referred to as the offending vehicle), claiming compensation.

On notice, respondents No. 2 and 3 had appeared and offered a contest whereas respondent No. 1 did not appear despite service and was proceeded against ex-parte.

On conclusion of trial, the Motor Accidents Claims Tribunal, Nuh vide Award dated 13.12.2013 accepted the claim petition and awarded compensation of Rs.8,00,000/- with interest at the rate of 7.5 % per annum to the claimants payable by all the respondents jointly and severally from the date of filing of petition till actual realization. The details with regard to the apportionment of the compensation amount, mode and manner of payment thereof are given in the Award.

The petitioners claimants felt dissatisfied with the amount of compensation awarded to them and approached this Court by way of filing an appeal, notice of which was given to respondent No. 3-Insurance Company

which has put in appearance through counsel.

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

The Tribunal on analysis of the evidence adduced before it had taken the age of the deceased to be 28 years and his notional income to be Rs.5,000/- per month. In view of the circular issued by Labour Commissioner, Haryana dated 5.9.2011 specifying the minimum wages payable to unskilled workers to be Rs.4093.89/-. The contention of the claimants that he was earning Rs.9,000/- per month from his avocation as a driver was rightly rejected on account of non production of cogent and convincing evidence in that regard. Thus monthly income of the the deceased can be taken to Rs.5000/- per month. However, the Tribunal has not added any amount towards future prospects. In terms of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009***' keeping in view the age of the deceased 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is worked out to be Rs.7000/- (5000 + 2000). There are 6 dependent family members of the deceased. In view of judgment "***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77***" by the Apex Court where number of dependent family members is 6 deduction of 1/4th amount is to be made towards personal and living expenses of the deceased. Doing that the dependency of the claimants is worked out to Rs.5250/- per month. The annual dependency comes out to Rs.63,000/- (5250 x 12). The Tribunal has rightly applied multiplier of 17 keeping in view the age of the deceased. Doing that the total compensation

comes out to Rs.10,71,100/- (63,000 x 17). The Tribunal has awarded a sum of Rs.10,000/- to the widow of the deceased on account of loss of consortium and Rs.25,000/- towards funeral expenses. However, in terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' Rs.70,000/- is to be awarded under conventional Heads. Therefore, the total compensation comes out to Rs.11,41,000/- (10,71,100 + 70,000).

The Tribunal has awarded compensation of Rs.8,00,000/-. In that way, the additional amount of compensation comes out to Rs.3,41,000/- (11,41,000 – 8,00,000). The impugned award is modified and a sum of Rs.3,41,000/- as additional compensation is awarded to the claimants payable by the respondents jointly and severally with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization. The additional amount shall be apportioned among the claimants proportionately in terms of the direction already issued by the Tribunal in the impugned award. The other terms and conditions shall remain same as given in the Award.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

November 18, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No