IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 9579 of 2014(O&M)

Date of Decision: January 15 , 2019.

Kamaljeet and others ...... APPELLANT (s)

Versus

Suresh Chand and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anil Kumar Garg, Advocate
for the appellants.

None for respondent No.2.

Mr. Vinod Chaudhri, Advocate
for respondent No.3.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

CM No.26604-CII of 2014

Respondent No.1 is reported to have died. As it is submitted by learned counsel for the appellants and respondent No.3 that liability of the Insurance company is not in dispute, impleadment of legal representatives of respondent No.1 is dispensed with.

There is a delay of 420 days in filing of this appeal.

It is submitted that appellant No.1, widow of the deceased – Sadhu Shekh is an illiterate rustic woman, not having any knowledge of the niceties of law. When she came to know about her right to file an appeal, copy of the impugned award was applied. Necessary finances were arranged and the present appeal was thus filed. It is submitted that appellants No.2 to 5 are minor children of the deceased and appellant No.1. Appellant No.6 is the aged mother of the deceased. The applicants have nothing to gain by delay in filing of this appeal. It is thus prayed that this application be allowed.

Learned counsel for the non-applicant/respondent No.3 submits that there is no cogent reason or explanation for the aforesaid delay. Ignorance of law cannot be a defence.

Heard learned counsel for the parties.

Keeping in view the facts and circumstances of the case and the averments in the application duly accompanied by an affidavit of the applicant/ appellant No.1, it is considered just and expedient to condone the delay of 420 days in filing of this appeal and decide the appeal on merits rather than dismiss it on technical consideration of delay.

However, it is made clear that the applicant/appellants shall not be entitled to any interest for the period of delay in case enhancement of the compensation, if any, is ordered in the appeal.

Application is accordingly disposed of.

FAO No.9579 of 2014

Notice of motion.

Mr. Vinod Chaudhri, Advocate accepts notice on behalf of respondent No.3. None has appeared on behalf of respondent No.2, despite service. Impleadment of legal representatives of respondent No.1 stands dispensed with.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Sangrur (for short, the 'Tribunal') vide impugned award dated 07.05.2013 on account of death of Sadhu Shekh in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Sadhu Shekh, who lost his life in a motor vehicle accident which took place on the intervening of August 19 and 20, 2009. FIR No.74 dated 20.08.2009, under Sections 279/304A/ 427 IPC, Police Station Ramraj was registered against respondent No.1, driver of the offending vehicle. Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of tanker bearing registration No.UP-20-T-0676 by respondent No.1-Suresh Chand. There is no challenge to the finding of the learned Tribunal in this respect and the same has attained finality.

Learned Tribunal awarded a total sum of ₹7,02,000/- as compensation to the claimants vide impugned award dated 07.05.2013. Income of the deceased was assessed as ₹4,000/- per month. Addition in income at the rate of 30% was awarded. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 15 was applied. ₹5,000/- each on account of loss of estate, funeral expenses and loss of consortium was awarded.

Learned counsel for the appellants submits that the appellants are entitled to increment at the rate of 40% instead of 30% on account of future prospects. Furthermore, amount under the conventional heads is meagre. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3 however prays that the impugned award does not call for any enhancement of the compensation as the same is reasonable and just in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding the date of Sadhu Shekh in a motor vehicle accident which took place on the intervening of August 19 and 20, 2009 due to the rash and negligent driving of the offending tanker bearing registration No.UP-20-T-0676 by respondent No.1-Suresh Chand, neither is there a dispute regarding liability of the Insurance company. Income of the deceased, which has been assessed as ₹4,000/- per month by the learned Tribunal is accepted to be correct by the appellants.

The deceased was proved to be 39 years old at the time of his death. Increase in income at the rate of 40% instead of 30% on account of loss of future prospects has to be afforded keeping in view the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction of 1/4th has been rightly effected and multiplier of 15 has been correctly applied as well by the learned Tribunal. Instead of ₹5,000/- each, the claimants are entitled to ₹15,000/- each on account of funeral expenses and loss of estate. A sum of ₹40,000/- each towards loss of spousal consortium to appellant No.1 (instead of ₹5,000/-), loss of parental consortium to appellants No.2 to 5 and loss of filial consortium to appellant No.6 is awarded in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	4000 p.m. i.e. ₹48,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	48,000 + (48,000 **x** 40%) = 67,200
3.	Net income after 1/4th deduction on account of personal expenses	67,200 – (67,200 **x** 1/4) = 50,400
4.	Total dependancy after applying a multiplier of 15	(50,400 **x** 15) = 7,56,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium @40,000	40,000
8.	Loss of parental consortium @40,000	40,000 x 4 = 1,60,000
9.	Loss of filial consortium @40,000	40,000
	Grand Total	₹10,26,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the entire amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(**LISA GILL**)
JUDGE

January 15 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No