IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 128 of 2017
DATE OF DECISION :- September 02, 2019

Sukhvir Singh ...**Appellant**

Versus

Satnam Singh and others ...**Respondents**

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

Present:- None for the appellant.

Ms. Vandana Malhotra, Advocate for respondent No. 3.

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C.M. No. 485-CII of 2017

This is an application for condonation of delay of 569 days in filing of the appeal. The delay in filing of the appeal does not appear to be intentional or wilful. Even otherwise the appellant is not going to gain anything by belated filing of the appeal and it is always desirable that a lis is decided on merits rather than dismissing it outrightly on technical grounds. Therefore, the application under Section 5 of the Limitation Act is accepted and delay in filing of the appeal stands condoned.

F.A.O. No. 128 of 2017

There is no representation on behalf of the appellant. Similar was the position on previous two dates of hearing. As per office report, counsel for the appellant has been informed but he has not turned up. Therefore, I proceed to decide the appeal after hearing learned counsel for

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respondent No. 3-Insurance Company and going through the record.

Briefly stated the facts of the case are that on account of death of Kulwant Kaur, in a road side accident which took place on 24.3.2012 at Canal Bridge Akhara at about 6.00 P.M., near Jagraon statedly due to rash and negligent driving of Verna Car bearing registration No. PB-21-D-0022 by respondent No. 1, son of the deceased namely Sukhvir Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Satnam Singh-driver. Inderjit Singh-owner and Tata AIG General Insurance Co. Ltd, Pakhowal Road, Ludhiana-insurer of offending vehicle, claiming compensation to the tune of Rs. 18 lacs.

On notice, all the three respondents appeared and offered a contest. The parties went on trial.

After hearing the arguments advanced by learned counsel for the parties, the Motor Accidents Claims Tribunal, Ludhiana vide Award dated 6.10.2014 awarded compensation of Rs.5,85,112/- with interest at the rate of 6% per annum from the date of filing the claim petition till actual realization since liability of all the three respondents were found to be jointly and severally.

Feeling aggrieved with the compensation awarded by the Tribunal on lower side the claimant has approached this Court by way of filing the appeal, notice of which was given to the Insurance Company, who has put in appearance through counsel. Since there is no representation on behalf of the appellant, I have heard learned counsel for the Insurance Company besides going through the record.

The Tribunal on the basis of evidence adduced before it has taken age of the deceased to be 45 years. As per version of the claimant she

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was running a Gol Gappa Stall at Jagraon earning Rs.10,000/- per month and drawing family pension of Rs.7,000/-. In that way her total earning was Rs.17,000/-per month, According to version of the claimant, he was studying for a degree in Engineering at Polytechnic College and was financially dependent upon his mother. The claimant had examined Shiv Kumar, Clerk-cum-Computer Operator, State Bank of Patiala, Raikot Branch as CW1 who had brought computerized copy of pension record Ex.PW1/A. CW3 Darshan Singh, Upper Division Clerk, Punjab State Power Corporation Ltd, Raikot had brought summoned record and proved certified copy of the same as PW3/A. The Tribunal had assessed the income of deceased to be Rs.5,000/- conscious of the fact that minimum wages of a semi-skilled worker at relevant time as per guidelines of Government of Punjab were Rs.5980/- per month w.e.f. 1.9.2012. In addition to that the deceased used to do house hold work also. The amount assessed by the Tribunal at Rs.5,000/- per month is certainly on the lower side and in my considered view it should be taken as Rs.6,000/- per month. Tribunal fell in error in deducting 1/3rd of the income towards her personal and living expenses. Since the Tribunal has observed that the claimant had failed to adduce any evidence that Kulwant Kaur was earning income of Rs.7,000/- per month by selling Gol Gappas and her efforts put in for doing house hold work have been taken into consideration, such deduction was uncalled for. Therefore, the dependency of the claimant is taken to be Rs.6,000/- per month. The annual dependency comes out to Rs.72,000/- (6000 x 12). Keeping in view the age of the deceased multiplier of 14 was rightly applied in view of the observations made in a land mark authority ***"Smt. Sarla Verma***

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and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77" by the Apex Court. In that way the total compensation comes out to Rs.10,08,000/-.

The claimant has been awarded Rs.25,000/- as funeral expenses which in view of judgment **'*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** he is entitled to get Rs.30,000/- under conventional Heads, therefore, the total compensation comes out to Rs.10,38,000/-. Though the appeal is allowed partly and enhanced compensation of Rs.4,53,888/- (Rs.10,38,000-Rs.5,85,112) is awarded to the claimant payable by all the respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing of appeal till actual realization with cost of the appeal.

(H.S. MADAAN)
JUDGE

September 02, 2019
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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