

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

FAO No. 7272 of 2016(O&M)

Date of Decision: May 08 , 2019.

Amarjit Kaur and others

..... APPELLANT (s)

Versus

Tarlok Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Munish Gupta, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No.3 – Insurance company

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?

LISA GILL, J.

CM No.24895-CII of 2016

There is a delay of 1079 days in filing of the appeal.

It is submitted that the appellants, who are the mother and minor siblings of the deceased, were in a state of shock and it is due to circumstances beyond their control that delay in filing of the appeal has occurred. Learned counsel points out that as it was submitted at the time of issuance of notice in this application, the applicants/appellants undertake not to claim any interest for the period of delay, in case any enhancement of compensation is ordered in appeal.

It is thus prayed that this application be allowed.

Though no reply to the application for condonation of delay has been filed despite opportunity, learned counsel for respondent No.3 submits that there is no reasonable explanation for the colossal delay in filing of the appeal.

Heard learned counsel for the parties.

Keeping in view the facts and circumstances of the case as well as the present, being an appeal filed by the claimants on account of death of Prabjot Singh, besides, the specific undertaking of the appellants before this Court in respect to their claim for interest, it is considered just and expedient to condone the delay of 1079 days in filing of the appeal and decide the same on merits, rather than dismiss the same on a technical consideration of delay.

Application is accordingly allowed. Delay in filing of the appeal is condoned.

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

FAO No.7272 of 2016

Notice of motion.

Ms. Madhu Sharma, Advocate accepts notice on behalf of respondent No.3-Insurance company. Liability of the Insurance company is not in dispute, therefore, service upon respondents No.1 and 2 is dispensed with. Respondent No.4 is a proforma respondent.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Jalandhar (for short, the 'Tribunal') vide impugned award dated 04.03.2013 on

account of death of Prabjot Singh in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Prabjot Singh, who lost his life in a motor vehicle accident which took place on 17.09.2011. FIR No.208 dated 18.09.2011 under Sections 279/337/304A/338/427 IPC, Police Station Adampur was registered against respondent No.1-driver.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of Tempo Traveller bearing registration No.PB01-7364 by respondent No.1-Tarlok Singh. This finding of the learned Tribunal has attained finality.

Learned Tribunal while assessing notional income of the deceased to be ₹3,000/- per month, awarded a total compensation of ₹2,80,000/- to claimant No.1. Deduction to the extent of 50% was effected. Multiplier of 15 was applied. ₹5,000/- each was awarded on account of loss of estate and funeral expenses. Appellants No.2 and 3 being siblings of the deceased were not held entitled to any compensation.

Learned counsel for the appellants argues that the deceased was giving training in the Art of Gatka and also used to teach playing of Tabla. Therefore, his income should be assessed as ₹12,000/- per month. It is further submitted that increment on account of future prospects should be afforded. Compensation under the conventional heads is meagre as well. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company refutes the abovesaid averments and submits that just and reasonable compensation has been awarded by the learned Tribunal which does not call for any enhancement. 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 death of Prabhjot Singh in a motor vehicle accident which took place on 17.09.2011 due to the rash and negligent driving of the offending vehicle bearing registration No.PB01-7364 by respondent No.1-Tarlok Singh. Neither is there a dispute regarding liability of the Insurance company.

Deceased-Prabhjot Singh was admittedly 20 years old at the time of the accident. There is indeed no evidence on record to indicate that the deceased was giving any training of Gatka to children or that he used to teach playing of tabla, thus, earning ₹12,000/- per month. However, it cannot be ignored that even the minimum wage of an unskilled labourer in the State of Punjab was ₹4,106/- per month at the relevant time. Therefore, income of the deceased is assessed as ₹4,106/- per month.

Claimants are entitled to addition in income at the rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Deduction 50% towards personal expenses has been correctly effected by the learned Tribunal.

However, learned Tribunal has erred in applying the multiplier of

15. The Hon'ble Supreme Court in Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 has specifically held that multiplier is to be applied with reference to the age of the deceased. Deceased in this case was admittedly 20 years old at the time of the accident. Hence, multiplier of 18, instead of 15, is required to be applied.

Instead of ₹5,000/- on account of loss of estate, ₹15,000/- each towards funeral expenses and loss of estate is awarded to the claimants. Appellant No.1 is held entitled to ₹40,000/- on account of loss of filial consortium in terms of the judgments of the Hon'ble Supreme Court in Pranay Sethi (supra) and Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333 as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others). There is no evidence on record to indicate that appellants No.2 and 3 were dependant on the deceased. Neither has any argument been raised in this respect. Thus, conclusion of the learned Tribunal in this regard is upheld.

Appellant-claimant No.1 is, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	4106 p.m. i.e. ₹49,272/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	49,272 + (49,272 x 40%) = 68,981
3.	Net income deduction of 50% on account of personal expenses	68,981 – (68,981 x 1/2) = 34,490
4.	Total dependancy after applying a multiplier of 18	(34,490 x 18) = 6,20,820
5.	Loss of estate	15,000

6.	Funeral expenses	15,000
7.	Loss of filial consortium to appellant No.1	40,000
Grand Total		₹6,90,820/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest on the entire amount at the rate of 7.5% per annum, instead of 6%, from the date of filing of the petition till realization. However, the claimant shall not be entitled to interest for the period of delay in filing of the appeal.

Appeal is accordingly disposed of.

May 08 , 2019.
'om'

(LISA GILL)
JUDGE

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