

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

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FAO No.2983 of 2016 (O&M)

Date of decision: 01.04.2019

SULEKHA AND ORS

... Appellants

Versus

DHARA RAM @ DHARA SINGH AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Devender Arya, Advocate for the appellants.

Mr. Punit Jain, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM-11022-CII-2016

Prayer in this application is for condonation of delay of 588 days in filing the appeal.

Reply to the application filed in the Court, is taken on record.

In view of averments made in the application supported by an affidavit of Smt. Sulekha, one of the claimants coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 588 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Subhash Chand in a motor vehicular accident that took place on 10.05.2013.

The Tribunal has awarded Rs.11,67,500/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Addition in income for future prospects	50%
3. Multiplier	17
4. Deduction for personal expenses	1/4 th
5. Loss of dependency	Rs.11,47,500/-
6. Expenses on funeral	Rs.10,000/-
7. Loss of consortium	Rs.10,000/-

The plea of claimants is that deceased was employed as conductor on Tata vehicle No.RJ-18GA-4946 at a salary of Rs.10,000/- per

month besides perks including meals and clothes. The claimants examined Raj Kumar owner of the aforesaid vehicle PW2 and Parmod driver on the said vehicle PW3 to establish their plea that deceased was working as conductor on the aforesaid vehicle. The Tribunal, in para 19 of the award, has noticed that there is no cogent and documentary evidence on record that Subhash Chand was getting salary of Rs.10,000/- per month. Raj Kumar PW2 had deposed that he used to maintain record regarding driver and conductor of aforesaid vehicle but records maintained by said Raj Kumar have not been produced on file. However, the Tribunal has not doubted testimonies of the witnesses with regard to the deceased working as a conductor on the aforesaid Tata vehicle. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.5500/- per month. Addition in income for future prospects would be 40%, in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.11,78,100/- $[(5500 \times 12 \times 17) + (40\% \text{ future prospects}) - (1/4^{\text{th}} \text{ deduction for personal expenses})]$.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.12,48,100/- and the additional amount is Rs.80,600/- (12,48,100 - 11,67,500), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay, to minors Kumari Komal and Kumari Bharti, in equal ratio to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. Interest accruing on FDR shall be payable to mother of the minors for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

01.04.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No