

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

FAO No. 3556 of 2016(O&M)

Date of decision: 30.4.2019

Prem Lata and othersAppellants

VERSUS

Dev Raj and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Inderjeet Singh, Advocate for the appellants.

Mr. Amit Kundra, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

CM No.12581-CII of 2016

Prayer in this application is for condoning delay of 76 days
in re-filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit of Mr. Sunil K. Tandon, Advocate, the application is allowed.

Delay of 76 days in re-filing the appeal stands condoned..

Disposed of accordingly.

CM No.12582-CII of 2016

Prayer in this application is for condoning delay of 577 days
in filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit of Prem Lata - appellant, the application is allowed. Delay of 577

days in filing the appeal stands condoned, subject to the condition that in case the appellants succeed in appeal, they will forgo interest for the period of delay.

Disposed of accordingly.

FAO No.3556 of 2016

The claimants are in appeal seeking enhancement of compensation awarded by Motor Accidents Claims Tribunal, Ambala (in short 'the Tribunal') on account of death of Baldev Raj in a motor vehicular accident that took place on 30.12.2011 but he died on 25.02.2012.

The Tribunal has awarded Rs.4,97,229/- detailed hereunder:-

Monthly income of the deceased	Rs.4200/-
Deduction for personal expenses	1/3 rd
Multiplier	7
Loss of dependency	Rs.2,35,200/-
Loss of estate, consortium and funeral expenses	Rs.9500/-
Medical expenses	Rs.2,52,529/-

However, the claimants are held entitle to 50% of compensation i.e. Rs.2,48,614/- (rounded off to Rs.2,49,000/-) as 50% negligence has been attributed to the deceased.

Counsel for the appellants has assailed findings of the Tribunal on issue No.1 whereby it has been held that accident took place due to equal negligence of the deceased and Dev Raj- respondent No.1 therein. It is argued that though Sham Singh, an eye-witness to the

occurrence has admitted correctness of his statement recorded under Section 161 Cr.P.C. Ex.R1 but nothing has been stated therein as to how much road was crossed by the deceased by the time driver of offending Alto Car HR01-AB-5493 hit the victim. It is further argued that Dev Raj, driver of the offending vehicle, did not appear in the witness box to explain that accident in question took place despite his having taken reasonable care and precaution to avoid collision, therefore, findings of the Tribunal on issue No.1 are liable to be modified and entire negligence in causing the accident should be attributed to driver of the offending vehicle.

With regard to quantum of compensation, it is argued that the deceased was a pensioner and his income needs to be assessed on the basis of minimum wage of a skilled person. In addition, it is argued that the deceased retired from service two months before the occurrence and as such he was slightly more than 60 years of age and accordingly, multiplier of 9 should be applied. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 and so also assessment of compensation by the Tribunal.

Sham Singh, author of FIR No.6 dated 02.01.2012 and an eye-witness to the occurrence was examined to discharge onus of issue No.1 attributing rashness and negligence to the offending car, driven by Dev Raj. He tendered into evidence his duly sworn affidavit by way of examination in chief and reiterated cause of the claimants that accident was caused due to rash and negligent driving of offending vehicle. In his cross examination, he would state that he had not stated in his statement before

the police that deceased was crossing the road. He was confronted with statement Ex.R1 wherein it was recorded that the deceased was crossing the road. Not only this, in the concluding part of his cross examination, he was again confronted with his statement Ex.R1 and he admitted that Ex.R1 was written on his dictation and thereafter he put his signatures on the same. Taking into consideration first version recorded by Sham Singh, it becomes undisputed position of the case that deceased was crossing the road at the time of unfortunate occurrence but he did not bother to ensure that no vehicle was approaching him from either side at that time. However, Dev Raj, driver of the offending vehicle did not appear in the witness box to explain the circumstances under which the occurrence in question took place much less to prove that despite his having taken reasonable care, he could not avoid collision with the victim. In view of the above, it can be held that the present is a case of contributory negligence of the deceased and driver of offending vehicle. As the deceased was a pedestrian and driver of offending vehicle owed a greater responsibility to avoid collision by using mechanism provided in the vehicle and he did not appear in the witness box to depose about the care taken by him, interest of justice would be served if extent of negligence attributed to the deceased is reduced to 25% in place of 50% determined by the Tribunal. Findings of the Tribunal on issue No.1 are modified, accordingly.

The deceased retired from Department of Central Government as he was working as Mailman. Perusal of copy of Pension Payment Order, made available during course of hearing, would reveal that his approximate date of birth was 15.10.1951 and as such he was less than 60

years and 6 months at the time of occurrence and death. Hon'ble the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** allowed multiplier of 9 for the age group 56-60 years and 7 for 61-65 years. There is no principle laid down by the Court as to how the multiplier is to be applied if the deceased happens to be more than 60 years but less than 61 years of age. As in the present case, the deceased was less than 60 years and 6 months, coupled with that provisions of Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, multiplier of 9 is applied.

Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with that the deceased was a retiree from Railway Department, income of the deceased is assessed at Rs.4600/- per month. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. In this manner, loss of dependency comes to Rs.3,31,200/- [Rs.496,800/- (Rs.4600 x 12 x 9) – Rs.1,65,600/- (1/3rd deduction towards personal expenses)].

Compensation for medical expenses allowed by the Tribunal is affirmed but subject to the claimants filing an affidavit in Registry of the Court within a period of two months that they have not sought reimbursement of medical expenses based upon documents Ex.P3 to P125.

Under conventional heads, the claimants shall be entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.6,53,729/-.

Claimants shall be entitle to 75% of the amount i.e. Rs.4,90,296/-. The additional amount is Rs.2,41,296/- payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 577 days in filing the appeal, to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

APRIL 30, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no