IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1997 of 2019 (O&M)
DATE OF DECISION :- November 24, 2022

Gurdeep Singh (since deceased) through LRs and others
...Appellants

Versus

Jarnail Singh alias Kaka and others ...Respondents

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

Present:- Mr. Amaninder Singh Sekhon, Advocate for the appellants.

Mr. Rajbir Singh, Advocate
for respondent No. 3-Insurance Company.

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C.M. No. 6170-CII of 2019

This is an application under Section 5 of the Limitation Act for condonation of delay of 195 days in filing the appeal.

Heard.

Keeping in view the reasons given in the application and in the interest of justice, the application under Section 5 of the Limitation act is accepted and delay of 195 days in filing of the appeal is condoned.

FAO No. 1997 of 2019

Briefly stated the facts of the case are that on account of death of Gurcharan Singh @ Manta, aged about 30 years, statedly working as a contractor of construction besides being a dairy farmer, in a road side accident which took place on 12.5.2014 at about 7.30 A.M in the area of Dera Radha Soami, Hanumangah Road, Abohar, statedly on account of rash and negligent driving of Truck bearing registration No. RJ-04G-3262 by respondent No. 1 Jarnail Singh @ Kaka, legal representatives of deceased namely his parents i.e.

father Gurdeep Singh (since dead) now represented by his LRs Harjinder Kaur, Satpal Singh, Jaspal Singh, Veerpal Kaur and mother Smt. Harjinder Kaur had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Jarnail Singh alias Kaka, driver, Hanir Ram, owner and Shri Ram General Insurance Company, Jaipur, Rajasthan, insurer of Truck No. RJ-04G-3262.

After contest, the claim petition was allowed with regard to mother of deceased namely Smt. Harjinder Kaur claimant No. 2 and compensation of Rs.8,41,000/- with interest at the rate of 6% per annum was granted along with costs of the claim petition payable by the three respondents jointly and severally with the observation that the respondent No. 3 Insurance Company shall be at liberty to recover the awarded amount from respondents No. 1 and 2. However, the claim petition qua respondent No. 1(b) Satpal Singh 1(c) Jaspal Singh and 1(d) Veerpal Kaur was dismissed.

However, the claimants were dissatisfied with the Award and have brought the present appeal, notice of which was given to respondents. Only respondent No. 3 Insurance Company has put in appearance through counsel, whereas respondents No. 1 and 2 failed to appear despite due service.

I have heard learned counsel for the appellants and learned counsel for the Insurance Company besides going through the record.

I find that the Tribunal fell in error in coming to conclusion that father of deceased namely Gurdeep Singh was not to be taken as dependent on the earning of the deceased when the facts and circumstances of the case and evidence on the record pointed out otherwise. Sh. Gurdeep Singh has since expired and is being represented by his LRs. Therefore, entitlement of Gurdeep Singh to have a share in the compensation is also found to be there.

As far as the quantum of compensation is concerned, the Tribunal has not taken into consideration the fact that an addition towards future prospects was to be made towards the income of the deceased. Though the claimants asserted that the deceased was earning Rs.90,000/- per month by working as a construction contractor and dairy farmer, however, they failed to bring cogent and convincing evidence in that regard so the Tribunal was justified in taking the monthly income of the deceased as Rs.8,000/- being the wages of a labourer on daily basis. Keeping in view the age of the deceased which has been taken to be 30 years, an addition of 40% is required to be made. Doing that monthly income of the deceased come out to Rs.8,000 + 3200 = Rs.11,200/-. Since deceased was a bachelor, 50% of this amount is to be deducted towards his personal and living expenses. In that way the dependency of the claimants comes out to Rs.5600/- per month. The annual dependency comes out to Rs.5600 x 12 = Rs.67,200/-. The Tribunal has rightly used the multiplier of 17. In that way, the total compensation comes out to Rs.67200 x 12 = Rs.11,42,400/-. The Tribunal has awarded only funeral expenses of Rs.25,000/- without awarding compensation under conventional Heads and loss of consortium and loss of Estate. Both the claimants are entitled to filial consortium to the extent of Rs.40,000/- each, Rs.15,000/- towards funeral expenses and Rs.15,000/- as compensation on account of loss of Estate. The total come out to Rs.1,10,000/-. Therefore, the total compensation is worked out as Rs.12,52,400/-. In that way the claimants are entitled to get additional compensation of Rs.4,11,400/- (12,52,400 – 8,41,000) payable by all the three respondents jointly and severally. Of course, the Insurance Company would make the payment to the claimants with interest at the rate of 7.5% per annum from the date of filing of appeal till actual realization having same recovery right from respondents No. 1 and 2 as mentioned in the impugned Award. The additional compensation of Rs.4,11,400/- would be paid to LRs of the appellant No. 1 and LRs of appellant No. 2 in equal shares. Claimant No. 2 Harjinder Kaur is also said to have died leaving behind her LRs who have since been brought on record.

With such modification, the appeal is disposed of, as allowed with costs.

(H.S. MADAAN)
JUDGE

November 24, 2022
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No