

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

FAO-1065-2005 (O&M)

Date of decision : 25.08.2022

Sunita Devi & Ors.

... Appellant(s)

Versus

Shekh Nizam & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Shaveta Sanghi, Advocate for the appellants.

Mr. D.P. Gupta, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

The file of the present case was burnt during a fire which took place in the Registry. The paper book was thereafter reconstructed with the help of the counsel.

Learned counsel for the appellants has pointed out that the delay in filing the present appeal was condoned and the appeal was admitted. However, none of the orders are available on the file. Learned counsel for respondent No.3-Insurance Company states that he does not have any of the orders. In view of the fact that none of the previous orders are available on the file, firstly the application for condonation of delay is being taken up.

CM-4237-CII-2005

This is an application for condonation of delay of 284 days in filing the present appeal.

It has been stated in the application that the claimant-appellant No.1 is a young widow with a minor child, who has been arrayed in the present appeal as appellant No.2, and claimant-appellant No.3 is the father of the deceased-Dharampal. Appellant Nos.1 and 3 were in shock after the death of Dharampal and, hence, could not file the present appeal.

Learned counsel for respondent No.3 has contended that delay has not sufficiently been explained in the present case.

The appeal has been filed by the claimants who lost their husband/father/son in an unfortunate accident on 22.02.2002. First appeal is a valuable right of the claimants and cogent reasons have been stated for the delay in filing the appeal. Keeping in view the totality of the circumstances, the delay of 284 days in filing the present appeal is condoned.

CM stands disposed off.

MAIN APPEAL

The present appeal has been preferred against the award dated 22.01.2004 passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal').

The facts in the present case are not in dispute and hence are not being reproduced for the sake of brevity.

Learned counsel for the appellants would contend that the deceased was earning Rs.5,000/- per month, however, income of the deceased has been assessed by the Tribunal as Rs.3,500/- per month. It is further the contention that no amount has been awarded towards future prospects, under conventional heads as well as for loss of consortium.

Per contra, learned counsel for respondent No.3 has contended that the income of Rs.3,500/- has rightly been assessed by the Tribunal in the absence of any cogent evidence that the income of the deceased was Rs.5,000/- and there is no scope for any enhancement in the present case.

I have heard the learned counsel for the parties.

The Tribunal while assessing the income of the deceased as Rs.3,500/- per month has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.3500/-
2	Annual income of the deceased	Rs.42000/- (3500x12)
3	Annual income after 1/3 rd deduction towards personal expenses	Rs.28000/- (42000-14000)
4	Multiplier 17	Rs.476000/- (28000x17)
5	Total income of the deceased	Rs.476000
6	General Damages	Rs.9500/-
	Total Compensation	Rs.485500/-
	Interest	9% per annum

The argument of learned counsel for the appellants that the income of the deceased was Rs.5,000/- per month, cannot be accepted in the absence of any cogent evidence on the record. Sube Singh Yadav, who had stepped into witness box as PW-4 and is stated to have employed the deceased, stated that he was running a transport business and was having an income of Rs.10,000/- per month from the fleet of six cars after adjusting the instalments of loan and, hence, it is held unbelievable that out of Rs.10,000/- that he was earning an amount of Rs.5,000/- was being paid to his employee.

No cogent evidence has been shown to the Court to arrive at a conclusion that the income of the deceased was Rs.5,000/- per month. In view thereof, this submission stands rejected.

A perusal of the award reveals that multiplier of ‘17’ in the present case has rightly been applied. However, no amount has been awarded towards future prospects, loss of consortium as well as under conventional heads as per the law laid down by the Hon’ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680], **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** [(2009) 6 SCC 121] and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors.** [(2018) 18 SCC 130]. The appellants are also entitled to 10% increase under the conventional heads as well as under the head consortium as per the law laid down in **N. Jayasree & Ors. vs. Chola mandalam M.S General Insurance Company Ltd.** [2021 (4) RCR (Civil) 642]. In view of the settled law the modified compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3500/-
2	Annual Income of the deceased	Rs.42000/- (3500x12)
3	Annual dependency of the claimants after deduction of 1/3 rd	Rs.28000/- (42000-14000)
4	Future Prospects @ 40%	Rs.39200 (28000+11200)
5	Multiplier of 17	Rs.666400/- (39200x17)
6	<u>Loss of Consortium</u> (i) Parental (ii) Filial (iii) Spousal	Rs.44000 Rs.44,000 Rs.44,000 (Total Rs.132000)

7	Loss of Estate	Rs.16500
8	Funeral Expenses	Rs.16500
	Total Compensation	Rs.831400/-
	Amount Awarded by the Tribunal	Rs.485500/-
	Enhanced amount	Rs.345900/-

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% from the date of the filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

25.08.2022

Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO