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

**FAO No. 7310 of 2016 (O&M)
DATE OF DECISION :- November 15, 2022**

**Smt. Radha and others** **...Appellants**

**Versus**

**Surender Singh and others** **...Respondents**

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

**Present**:- Mr. Nipun Vashisht, Advocate for the appellants.

Mr. Sukhsharan Sra, Advocate for
Mr. Abhilaksh Grover, Advocate for respondents No. 1 and 2.

Mr. Punit Jain, Advocate for respondent No. 3.

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**CM-25016-CII-2016**

This appeal has been filed belatedly by 320 days. An application under Section 5 of the Limitation Act seeking condonation of delay has been filed contending that the appellants are villages and were not aware about the time within which the appeal was required to be filed. The delay was not intentional or wilful. Although the application is being opposed by learned counsel for the respondents but I find that Section 166 of the Motor Vehicles Act, 1988 is a piece of welfare legislation and a liberal attitude is required to be adopted in such like matters.

Therefore, in the interest of justice, delay of 320 days in filing the appeal stands condoned.

**FAO-7310-2016**

On account of death of one Sanwala, aged about 38 years, working as Supervisor with Metal Shop at Laxmi Rattan Complex near Hardware Chowk, Faridabad, statedly earning Rs.12,000/- per month, in a road side accident which took place on 15.9.2013 at about 7.45 P.M., in the area of Police Station Kotwali, Faridabad said to have been caused by respondent No. 1 Surender Singh by rash and negligent driving of Tractor No. HR-55S-0242, the legal representatives of the deceased namely his wife Smt. Radha, aged about 30 years, minor son Dinesh, aged about 9 years, Uki minor daughter, aged about 7 years, minor son Behra, aged about 5½ years, mother Smt. Vadhu had brought a claim petition under Section 166 of the Motors Vehicle Act, 1988 against Surender Singh, driver, Sunder Singh, registered owner, L&T Insurance Company Limited, Mumbai, insurer of the said Tractor.

After contest, the claim petition was allowed by Motor Accident Claims Tribunal, Faridabad and compensation of ₹14,65,000/- was awarded to the claimants payable by all the three respondents jointly and severally with the observation that respondent No. 3 Insurance Company was duty bound indemnify respondent No. 2 owner insured to the extent of compensation payable along with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization. The apportionment of compensation was directed as detailed in the Award.

The claimants were dissatisfied with the amount of compensation awarded to them by the Motor Accident Claims Tribunal and have approached this Court by way of filing the present appeal seeking enhancement of compensation so awarded.

Notice of the appeal was given to respondents, who have put in appearance through counsel.

I have learned counsel for the parties besides going through the record.

Learned counsel for the appellants claimants has attacked the impugned Award on three grounds. Firstly for non grant of compensation towards future prospects, secondly deduction towards personal expenses having wrongly been done to the extent of $1/3^{rd}$ instead of $1/4^{th}$ and thirdly the ground of attack is that proper compensation under conventional Heads has not been awarded. In support of his contentions he has relied upon judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** by the Apex Court. This proposition of law is not seriously disputed by counsel for the respondents.

A perusal of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** goes to show that it has been specifically observed that in case the deceased was self employed or on a fixed salary an addition of 40% of the established income should be there where the deceased was below the age of 40 years.

In this case the Tribunal has taken the monthly income of the deceased to be Rs.12,000/- by working as Supervisor with a private concern situated at Laxmi Rattan Complex. The age of the deceased had been taken to be 38 years. In that way 40% of the monthly income is to be added towards future prospects. Doing that the monthly income is worked out to ₹16,800/-.

In judgment ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77"*** by the Apex Court the parameters for deduction of personal expenses from the income of the deceased have been laid. It has been held that where number of dependent family members is 4 to 6, deduction towards personal and living expenses of deceased should be 1/4th.

In the present case, number of dependent family members is 5 i.e. widow of the deceased, 3 minor children and his mother. In that way, the deduction of 1/4th should have been made instead of 1/3rd which has been erroneously done by the Tribunal. In that way the dependency of the deceased comes out to ₹12,600/-. The Tribunal has correctly applied multiplier of 15. Doing that the total compensation is worked out to ₹22,68,000/-.

In view of the observations made in judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** the claimants are entitled to get ₹16,500/- under the Head loss of estate and ₹44,000/- under the Head loss of consortium for claimant No. 1 Smt. Radha, wife of deceased and ₹16,500/- towards funeral expenses. Total coming to ₹77,000/-. The total compensation payable is thus worked out to ₹23,45,000/-. The Tribunal has awarded compensation of ₹14,65,000/-. In that way, the amount of enhanced compensation is enhanced by Rs.8,80,000/-. The claimants shall be entitled to recover the enhanced amount of compensation from the respondents with interest at the rate of 7.5% per annum from one year after filing of the claim petition since this appeal has been filed belatedly by about one year, though the limitation has been condoned keeping in view the interest of justice.

With regard to apportionment of compensation that shall remain the same. While apportioning the compensation the amount would be increased proportionately from the original amount awarded.

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

**(H.S. MADAAN)**
**JUDGE**

**November 15, 2022**
*p.singh*

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No