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

**FAO No. 8008 of 2016 (O&M)
DATE OF DECISION :- November 30, 2022**

Shinder Kaur and others **...Appellants**

Versus

Gurpreet Singh and others **...Respondents**

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

Present:- Mr. Ashok Khosla, Advocate for the appellants.

Mr. Gopal Mittal, Advocate for
respondent No. 3-Insurance Company.

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C.M. No. 26829-CII of 2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 336 days in filing the appeal.

Heard.

It is contended that claimants being illiterate were not aware about the period of limitation and having lost the earning member of the family, they were in a state of shock, therefore, could not file the appeal within period of limitation, therefore, the delay in filing the appeal was not intentional or wilful.

I find sufficient reasons to condone the delay since the appellants would not have got any benefit by belated filing of appeal and the interest of justice demand that they should be given fair hearing considering the nature of the case.

Therefore, the application under Section 5 of the Limitation act is accepted and delay of 336 days in filing of the appeal is condoned.

FAO No. 8008 of 2016

Briefly stated the facts of the case are that on account of death of one Tehal Singh in a motor vehicular accident which took place on 21.2.2014 at about 3.30 P.M in the area of near Village Chak Amritsaria, Police Station Samana, statedly on account of rash and negligent driving of School Van bearing registration No. PB-11-R-1858 by respondent No. 1 Gurpreet Singh, legal representatives of the deceased namely his wife Smt. Shinder Kaur, aged about 43 years, son Satnam Singh, aged about 24 years another son Amritpal Singh, aged about 18 years, all residents of Village Saidewala, Tehsil Budhlada, District Mansa had filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 against Gurpreet Singh, driver, Budha Dal Public School, Samana owner and United India Insurance Company Limited, Patiala, insurer of the School Van in question.

After contest by all the respondents, the claim petition was accepted by Motor Accidents Claims Tribunal, Mansa on 17.8.2015. Compensation of Rs.7,32,000/- with interest at the rate of 6% per annum was granted to the claimants payable by all the three respndents jointly and severally along with cost of the claim petition.

Feeling dissatisfied with the amount of compensation awarded to them, the claimants have filed the instant appeal before this Court. Notice was issued to the respondents, however, only respondent No. 3 Insurance Company has put in appearance through counsel.

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

The Tribunal on analysis of the evidence adduced by the parties has come to the conclusion that Tehal Singh (deceased) had lost his life in accident which was caused due to rash and negligent driving of School Van bearing registration No. PB-11-R-1858 by driver Gurpreet Singh and it being so, appellants claimants, who are legal representatives of the deceased are entitled to get compensation under Section 166 of the Motor Vehicles Act, 1988.

` While assessing the compensation, the Tribunal had taken the age of the deceased to be 45 years and his monthly income was assessed as Rs.6,000/- per month keeping in view the wages payable to a labourer at the time of accident. In my view the Tribunal fell in error in assessing monthly income of the deceased as such. The claimants had established on record that the deceased was an agriculturist owning 15 acres of land by leading enough cogent and convincing evidence. It being so, the Tribunal assessing income of deceased at par with a labourer was uncalled for. Considering the fact that a farmer having 15 acres of land can lead comfortable life, his income as Rs.6,000/- per month is not justifiable. However, at the same time it is to be taken into consideration that agricultural land belonging to the deceased is still there, which can be got cultivated by the claimants and they can draw income therefrom. However, even if the efforts put in by the deceased for cultivation of the land and manage its affairs are to be quantified in terms of money then at least a sum of Rs.12,000/- per month deserves to be taken in that regard. The Tribunal failed to add any amount towards future prospects which in terms of judgment ***'National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** should have been taken to the extent of 25% of monthly income of the deceased keeping in view his age of 45 years. Therefore, adding that amount of 25% of monthly income towards future prospects the total amount comes out to Rs.15,000/- per month. Keeping in view the number of dependent family members as three, deduction of 1/3rd amount is to be made towards personal and living expenses of the deceased.

Doing that the dependency of the claimants comes out to Rs.10,000/- per month. The annual dependency comes out to 10,000 x 12 = 1,20,000/-. The Tribunal has rightly used multiplier of 14. In that way, the total compensation is worked out as Rs.1,20,000 x 14 = 16,80,000/-. The claimants are entitled to get Rs.15,000/- as funeral expenses, Rs.15,000/- on account of loss of Estate and claimant No. 1 Shinder Kaur is entitled to get Rs.40,000/- on account of loss of consortium whereas claimants No. 2 and 3, who are sons of deceased are entitled to get Rs.40,000/- each under Head filial consortium. The total compensation comes out to Rs.18,30,000/-. The Tribunal has awarded compensation of Rs.7,32,000/- to the claimants. In that way the claimants are entitled to get additional compensation of Rs.10,98,000/-(18,30,000 – 7,32,000). The claimants would be entitled to get the additional compensation in the same ratio as directed by the Tribunal in the impugned Award. They would be entitled to get interest at the rate of 7.5% per annum from the date of filing of appeal till actual realization. For the reasons that they have approached the Court belatedly by almost one year in filing the appeal, the delay is allowed with costs. The liability to pay compensation will be jointly and severally in terms of the observations made by the Tribunal in the original Award.

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

(H.S. MADAAN)
JUDGE

November 30, 2022
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No