IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2472-2021 (O&M)
Date of decision: 16.01.2023

Gur Devi & Others

...Appellant(s)

Vs

Kuldip Sharma & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. N.C. Kinra, Advocate for the appellants.

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NIDHI GUPTA, J.

CM-11290-CII-2021

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 107 days in filing the appeal.

In view of the reasons mentioned in the application, the same is allowed and delay of 107 days in filing the appeal is condoned.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.15,66,250/- awarded by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the learned Tribunal") vide Award dated 26.08.2019 passed in MACT Case

No.159 dated 13.08.2018 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants/appellants are the mother, widow, and four children of the deceased Naresh Kumar.

Learned Tribunal on basis of all the materials placed before it came to the conclusion that the deceased/Naresh Kumar died in motor vehicular accident that took place on 15.10.2016 due to the rash and negligent driving of respondent No.1/driver-cum-owner of Tipper bearing registration No.HR-68B-5531 (hereinafter referred to as "the offending vehicle"). The learned Tribunal upon assessment awarded compensation as follows:-

a) it was the pleaded case of the appellants before the learned Tribunal that the deceased was earning Rs.30,000/- per month. However, as no documentary evidence in support of their assertion was placed before the learned Tribunal, income of the deceased was taken as Rs.9,500/- per month, in conformity with the minimum wage admissible to a skilled labourer at the relevant time. Therefore, income of the deceased was assessed as Rs.1,14,000/- per year;

b) claimants being 6 in number, deduction of 1/4 was applied. Therefore, annual dependency of the claimants was assessed as Rs.85,500/-;

c) future prospects on the said amount to the tune of 25% was assessed as Rs.21,375/- in view of the fact that the deceased was 45 years of age at the time of death;

d) multiplier of 14 was applied;

e) Rs.70,000/- was awarded under conventional heads.

The only submission made on behalf of the appellants is that income of the deceased has been taken on lower side in view of the fact that the deceased was a contractor and also had agricultural income. It is stated that the deceased was earning almost Rs.33,000/- per month. It is further submitted that deduction of 1/5 should have been made and the learned Tribunal was in error in making deduction of 1/4. No other argument is raised on behalf of the appellants.

I have heard learned counsel for the appellants.

Learned counsel is unable to controvert the findings recorded in the impugned Award to the effect that no evidence whatsoever was led by the appellants/claimants in support of their assertion that the deceased was earning Rs.30,000/- per month. Even now, when questioned by this Court as to why income tax returns were not placed on record before the learned Tribunal to support their claim, learned counsel for the appellants submitted that agricultural income is exempted from income tax. When questioned regarding the deceased’s income as a contractor as claimed by the appellants, learned counsel has no reply.

It is therefore clear that the learned Tribunal has been just and reasonable in taking income of the deceased as that of Rs.9,500/- being a skilled labourer. Further, as per law laid down by the Hon’ble Supreme Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation and Another 2009 (3) RCR (Civil) 77,*** if the number of claimants are 4 to 6, then deduction of 1/4 has to be made.

Accordingly, I find no ground is made out to interfere in the impugned Award and the present appeal therefore, stands dismissed.

Pending application(s) if any also stand(s) disposed of.

16.01.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No