IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-90-CII-2022 in/&
FAO No. 26 of 2022
Date of Decision: 25.07.2023

Reshma Kumari and Ors.

......Appellants

Versus

Satish Kumar and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Ashwani Arora, Advocate
for the applicants-appellants.

GURBIR SINGH, J (ORAL)

CM No.90-CII-2022

1 The present application under Section 5 of Limitation Act has been filed by the applicants-appellants seeking condonation of 03 days' delay in filing the present appeal.

2 In view of the grounds taken in the application, delay of 03 days' in filing the appeal is condoned.

Application stands allowed.

FAO No.26 of 2022

1 The present appeal has been filed by the claimants against the award dated 15.11.2019 whereby petition filed by them under Sections 166 of the Motor Vehicles Act, 1988, was allowed with costs and award of compensation to the tune of Rs.10,07,194/- along with interest @ 7.5% per annum on the awarded amount from the date of filing of the claim petition till the date of actual realization was passed in favour of the appellants/claimants to be paid by the respondents.

2 Learned counsel for the appellants submits that learned Tribunal rightly held on the basis of the evidence that Kamlesh Kumar had met with a roadside accident caused by Satish Kumar and died due to the injuries suffered. Satish Kumar was driving the offending Bus No.HP55B-1810 in a rash and negligent manner. The compensation awarded by learned Tribunal is very less. The appellants are entitled for enhanced compensation. Kamlesh Kumar was 48 years of age at the time of accident. He was hale and hearty and was maintaining a very good health. He was working as a Raj Mistri and was earning a sum of Rs.25,000/- per month. He was a resourceful person and was maintaining a large family and was giving good and proper education to his children. Appellant No.3 was doing B.Com and was in 4th semester. Appellant No.4 was a student of 10+2. The deceased was also owner of Suzuki Access Scooter which was got financed and he was paying the monthly installment of Rs.2200/-. Without considering the same, the learned Tribunal considered the income of the deceased as only Rs.6750/- per month, equivalent to minimum wages whereas his income was required to be taken as Rs.25,000/- per month. He relies on the judgments reported as *'(i)**Reliance General Insurance Company Ltd. Vs. Sayera Khatoon and Ors., passed in FAO No.1207-2014, decided on 03.03.2014, (ii) Paramjit Kaur Vs. Ram Singh and Ors., passed in FAO No.5726 of 2014, decided on 30.08.2016, (iii) New India Assurance Company Limited Vs. Paramjeet Kaur and Ors., passed in FAO No.3983 of 2015, decided on 02.07.2015' (iv) Chameli Devi & Ors. Vs. Jivrail Mian & Ors., Civil Appeal No.7004/2019 and (v) Gurpreet Kaur & Ors. Vs. United India Insurance Company Ltd & Ors., Civil Appeal Nos.6981-82 of 2022**.*

3 I have heard submissions of learned counsel for the appellants.

4 The income of the deceased as determined in para 19 of the impugned award is as under-

> '19. In order to prove issue No.2, wife of deceased Reshma Kumari (claimant) appeared into witness box as CWI tendered her affidavit Ex.PW1/A alongwith documents Ex.P1 to P11 submitting therein that her husband was hale and healthy and was maintaining very good heath. He was working as a Raj Mistri and was erning a sum of Rs. 25,000/- per month. He used to contribute his entire income for meeting the household expenses after retaining some amount with him. Claimant no.2 Ms. Pooja Kumari, aged 21 years is the unmarried daughter of the deceased. Claimant no.3 Ajay Kumar, aged 19 years is the son of the deceased. He is doing B.Com and is in 4th Semester. Claimant no.4 Master Vijay Kumar, aged 17 years is the minor son of the deceased. He is student of 10 +2. The deceased has also purchased a Suzuki Access in the year October, 2017. The same has been financed through Sri Ram City Union Finance Limited and was paying monthly installment of about Rs. 2200/-, She further deposed her husband was a resourceful person and was maintaining a large family. All the claimants have suffered an irreparable loss due to the untimely death of deceased as they all were dependent on the deceased. Now, they have no source of income as the deceased was the earning member in the family.
>
> No Income proof has been produced to show the earning of deceased. Further even nothing has come on record that deceased was working as Raj Mistri except the oral testimony of PW-1.
>
> Further, in view of the above discussion as the deceased was able bodied person and must have earn at least minimum wages. Thus, the income of the deceased is taken as per minimum wages per month prescribed for unskilled labourer vide notification dated 16.04.2018 by Hitmachal Pradesh Government from 01.04.2018 is taken Rs.225/- per day i.e. Rs.6750/- per month. Thus, the annual income will be Rs.8010 x 12 = Rs.81,000/-.'

5 It is specifically mentioned by the learned Tribunal that no income proof has been produced. Except the oral testimony, there was nothing on record that deceased was working as Raj Mistri. It is not disputed that the minimum wages for unskilled workers at that time was Rs.6750/-per month. Claimant Pooja Kumari, aged 21 years is the unmarried daughter of the deceased. She did not step into the witness box and no evidence was brought that she was not earning. No evidence is led to prove that claimants Ajay Kumar and Vijay Kumar had been studying and what were the expenses being incurred on their education. Kamlesh Kumar (since deceased) purchased Scooter only on October 2017 whereas accident took place on 01.06.2018. So it cannot be said that he was resourceful person and was having more income. The burden is on the claimants to prove the income of the deceased. If no income is proved, then the learned Tribunal is justified in taking the minimum wages keeping in view the profession of the deceased. In ***Chameli Devi's case (supra)***, the deceased was a carpenter. His income was assessed at Rs.200/- per day thereby fixing it at Rs.5000/- per month. In ***Gurpreet Kaur's case (supra)***, the deceased was a contractor for lifting of earth. He also purchased a tractor after obtaining loan and was paying monthly installment of Rs.11,550/- in this regard. So the learned Tribunal assessed his income as Rs.25,000/- per month. The Hon'ble High Cour reduced the income but Hon'ble Apex Court fixed the income at Rs.25,000/- per month keeping in view EMI. The ratio of said authorities are distinguishable on facts and same cannot be applied in the facts of the present case. Learned Tribunal awarded and calculated the award as under:-

> '24. Accordingly, in the light of the position as noted above the claimants are held entitled to the following compensation.

Sr. No.	Head	Amount assessed in Rupees
1	Monthly Salary	Rs.6750/-
	Annual income	Rs.6750 x 12 = Rs.81,000/-
2	Future Prospects	25% of 81000=20,250 81000 + 20,250=1,01,250
3	Deduction towards personal expenses of deceased	1/4th of 1,01,250 = 25,312
	Income after deduction (loss of dependency)	1,01,250- 25,312 =Rs.75,938
4	Multiplier applied	13
5	Compensation awarded	Rs.75,938 x 13 =Rs.9,97,194/-
6	Loss of consortium (wife children)	40,000/- + 40,000/- = Rs.80,000/-
7	Funeral Expenses	15,000/-
8	Loss of love and affection	Nil
9	Loss of Estate	15,000/-
	Total	Rs.10,97,194/-

6 Deduction towards personal expenses has been taken as 1/4th while multiplier of 13 is applied keeping in view the age of the deceased. 25% of the compensation has been assessed as future prospects. The award passed by the learned Tribunal is accordance with the law and there is no infirmity in the same.

7 Accordingly, the present appeal is dismissed.

(GURBIR SINGH)
JUDGE

25.07.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No