

**CM No. 11057-CII-2021 in/and
FAO No. 2073 of 2021**

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

(265)

**CM No. 11057-CII-2021 in/and
FAO No. 2073 of 2021
Date of Decision : 17.01.2023**

Suresh and others

...Appellants

Versus

Sarver and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Goyal, Advocate for the appellants.

Harsimran Singh Sethi J. (Oral)

CM No. 11057-CII-2021

Though, in the present application, the delay of 529 days has been projected for which the prayer has been made for condonation of delay but keeping in view the order passed by the Division Bench in Suo-Motu Writ Petition (Civil) No. 3 of 2020 dated 10.01.2022, direction has been issued to the Registry as to how to compute the delay by excluding the restricted period during the pandemic of Covid-19.

As per order dated 10.01.2022 passed by the Division Bench, period starting from 15.03.2020 till 28.02.2022 is to be excluded for the purpose of limitation hence, as per the said order, there is a delay of 65 days, which has occurred in filing the present appeal and the same is condoned keeping in view the affidavit filed by the appellants.

Application is allowed.

FAO No. 2073 of 2021

The present appeal has been filed against the order of Motor Accident Claims Tribunal, Sonapat dated 10.10.2019 by which, the compensation for which the appellants are entitled for, have been computed.

Learned counsel for the appellants argues that the deceased Suresh died in an accident, which took place on 15.05.2018 as the motorcycle being driven by the deceased met with an accident with a Car bearing Registration No. HR-10AD-8541. Learned counsel for the appellants argues that while computing the salary of the deceased, the same has been assessed at ₹8500/- per month, which is totally arbitrary and illegal. Learned counsel for the appellants further argues that as the deceased was a Mason, he was entitled for a salary fixed for the semi-skilled personnel as per the Notification of the Labour Commissioner, Haryana. Hence, the compensation for which the claimants are entitled for needs to be assessed again.

From the record, it transpires that though, it was projected that the deceased was working as a Mason and earning ₹15,000/- per month but no such evidence had come on record to prove that deceased was working as a Mason and what was his income. No independent witness was brought on record even to prove that the deceased was working as a Mason and was earning ₹15,000/- per month as being claimed by the claimants. In the absence of any evidence to the said fact, by treating him as an unskilled labour, the minimum wages provided under the Notification issued by the Labour Commissioner, Haryana, the income of the deceased was assessed as ₹8500/- per month. Learned counsel for the appellants submits that the

statement of the father of the deceased should be treated as enough evidence to treat the deceased as a Mason.

The said argument of learned counsel for the appellants cannot be accepted for the reason that except a bald statement and that too of an interested witness, who is the father of deceased that the deceased was a Mason, earning ₹15,000/- per month, no corroborating evidence was brought on record to support the fact that the deceased was working as a Mason so as to earn the said amount. Once, neither the salary nor the occupation of the deceased could be proved on record, there was no other option with the Motor Accident Claims Tribunal, Sonapat to assess the income of the deceased except granting him the benefit under the Notification of the Labour Commissioner, Haryana under the Minimum Wages Act.

Hence, no discrepancy is found in the Award of the Tribunal so as to assess the income.

No other argument has been raised by the learned counsel for the appellants.

Keeping in view the above, no ground is made out for interference by this Court.

Dismissed.

January 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No