

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-5744-2019 (O&M)
Date of decision: 10.03.2023

Smt. Santra Devi & Another

...Appellant(s)

Vs.

Deepak Kumar @ Billu & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kulwant Singh Dhanora, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-19205-CII-2019

This is an application under Section 5 of Limitation Act for condonation of delay of 1574 days in filing the appeal.

The only reason cited for seeking condonation of such inordinate delay of 1574 days is that appellants belong to very poor family and had handed over case file including documents and Award of learned Tribunal to their counsel of High Court in December, 2014 within limitation. However, in April 2016, on enquiry, applicants/appellants came to know that no appeal has been filed by said counsel on their behalf. It is further submitted that applicants accordingly, approached present counsel on 03.04.2016.

Thereafter, Registry of this Court leveled some objections on 15.06.2016 in the present appeal and objections were removed and appeal was re-filed on 11.07.2016. Registry again leveled

some objections on 16.12.2016 and after getting the same cleared from the Registry, file of the present appeal was misplaced by Clerk of counsel for the applicants. Counsel for the applicants/appellants again prepared present appeal and filed the same without any further delay.

Application is duly supported by affidavit of appellant No.2.

I have heard learned counsel for the applicants/appellants.

It has been held by Hon'ble Supreme Court that delay of each day must be explained. However, in the present case, as per the applicants' own saying, they did not enquire about the status of their appeal from their counsel for almost one and a half years between December 2014, to April 2016. Accordingly, no sufficient cause has been shown to condone extraordinary and inordinate delay of 1574 days in filing the appeal. Present application therefore, stands **dismissed**.

MAIN CASE

Present appeal has been filed by the appellants seeking enhancement of compensation of Rs.6,80,000/- awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as "the learned Tribunal") vide Award dated 10.09.2014 passed in Claim Petition No.76 of 2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Appellants are parents of deceased-Rakesh Kumar. Proforma respondent No.4 is the wife of deceased-Rakesh Kumar.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Rakesh Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 11.03.2013 due to rash and negligent driving of canter bearing registration No.HR-45A-6571 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the ground;

a) that income of the deceased has been taken as only Rs.5,000/- per month whereas the same ought to have been taken as Rs.5,300/- per month as per relevant Minimum Wage notification;

b) that nothing has been granted towards future prospects.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. a) Learned Tribunal has granted compensation as follows:-

HEADS	AMOUNT
Income	Rs.5,000/-
Annual income	Rs.60,000/-
1/3 rd deductions	Rs.40,000/-
Multiplier of 17	Rs.6,80,000/-
Total	Rs.6,80,000/-

b) Age of the deceased is taken as 26 years on the basis of post mortem report Mark-B;

c) Though it was submitted on behalf of appellants that deceased was earning Rs.15,000/- per month as he was working as a mason, however as they produced no evidence/proof of income, learned Tribunal assessed notional income of the deceased as Rs.5,000/- per month. Though it has been stated by learned counsel for the appellants before this Court that income of the deceased ought to have been taken as Rs.5,300/- per month as per relevant Minimum Wage notification, however no such notification in support of this contention has been produced by learned counsel. Accordingly, I find no error in assessment of notional income of Rs.5,000/- per month as made by learned Tribunal;

d) As deceased was married at the time of accident, deduction of $\frac{1}{3}^{\text{rd}}$ was correctly made towards personal expenses;

e) As deceased was 26 years of age at the time of accident, multiplier of 17 was correctly applied. Accordingly, compensation was calculated to be Rs.6,80,000/-. Accordingly, I find no error in the compensation as assessed by the learned Tribunal.

7. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Moreover, compensation awarded upon the death of a near and dear loved one cannot be made a market negotiation, where every penny has to be calculated and drawn. All that has to be determined in the facts of a given

case is, that the compensation accorded is 'just'. In my considered view, in the present case, the learned Tribunal has awarded a very 'just' compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176***, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

8. I find the above said compensation to be just and fair in the circumstances of the case. Present appeal stands, **dismissed** on grounds of delay, as well as on merits.

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

10.03.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No