

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**253****FAO-5424-2022 (O&M)****Date of decision: 17.03.2023****Sunita & Others****...Appellant(s)****Vs.****Rupinder Singh Saini & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kamlesh, Advocate for
Mr. Manpreet, Advocate for the appellants.

NIDHI GUPTA, J.**CM-114-CII-2022**

This is an application under Section 5 of the Limitation Act for condonation of delay of 2224 days in filing the appeal.

The only reason cited by learned counsel for the appellants seeking condonation of such extraordinary and inordinate delay is that previous appeal filed by the applicants/claimants against Award dated 09.04.2014 was withdrawn by their counsel on 17.12.2019, and no intimation in this regard was given to them. It is submitted that it is for this reason that such delay was occasioned in filing present appeal. However, no details in the form of previous appeal number, order of withdrawal, etc. have been given in the application. Even otherwise, it is clear that the claimants were not vigilant for their rights. Moreover, Hon'ble Supreme Court has held that delay of each day has to be explained. Thus, no sufficient cause has been shown to condone extraordinary and inordinate delay of 2224 days in filing the appeal. Accordingly, present application stands **dismissed**.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.10,44,000/- awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as “the learned Tribunal”) vide Award dated 09.04.2014 passed in MACT Case No.33/275 of 2010 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). Claimants are wife, two major children and two minor children of deceased-Raj Pal Saxena.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Raj Pal Saxena had died due to injuries suffered by him in a motor vehicular accident that took place on 05.06.2010 due to rash and negligent driving of Innova car bearing registration No.CH-01AA-7301 (hereinafter referred to as “the offending vehicle”) being driven and owned by respondent No.1 and insured by respondent No.2. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

3. The only ground on which learned counsel for the appellants seeks enhancement of compensation is that income of the deceased has been taken as Rs.5,000/- per month which is on lower side. It is submitted that as per relevant minimum wages prevalent at the time of accident, income of the deceased ought to have been assessed as Rs.5,700/- per month.

4. No other argument is made on behalf of the appellants.
5. I have heard learned counsel for the appellants.
6. a) Perusal of record of the case shows that in respect of income of the deceased, following findings have been returned by the learned Tribunal in Para 26 of the impugned Award:-

“26. No documentary evidence of income of deceased is forthcoming nor can be expected as deceased, according to his wife PW-1 Sunita, was a rickshaw puller. There is nothing on record to accept claimant’s plea that deceased was also running a ‘dhaba/tandoor’ in village Burail, Chandigarh. Income of the deceased is to be assessed as that of a daily wager. Keeping in mind the minimum rate of wages notified by the State for an unskilled worker in the year 2010, income of deceased is assessed as Rs.5000/-.”

b) On a Court query, learned counsel for the appellants is also unable to produce relied upon notification as per which it is stated that income of the deceased ought to have been taken as Rs.5,700/- per month. Accordingly, I find no error in the income as assessed by the learned Tribunal.

7. Moreover, a perusal of Award shows that learned Tribunal has computed the compensation in the following manner:-

HEADS	AMOUNT
Income	Rs.5,000/-
Future prospects @ 30%	Rs.6,500/-
Annual income	Rs.78,000/-
Deduction of 1/4 th	Rs.58,500/-
Multiplier of 14	Rs.8,19,000/-
Funeral expenses	Rs.25,000/-
Loss of consortium to claimant No.1	Rs.1,00,000/-
Loss of love & care guidance to 2 minor sons	Rs.1,00,000/-
Total	Rs.10,44,000/-

8. I find no error in the compensation as assessed by the learned Tribunal. 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.

9. Accordingly, present appeal stands **dismissed** on merits, as well as on grounds of delay.

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

17.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No