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

CM-7573-CII-2015 IN/AND
FAO-2414-2015 (O&M)
Date of Decision: 07.02.2023

Maha Rani and others ..... Appellants

Versus

Satya Narain and others .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ram Pal Verma, Advocate, for the appellant.

Mr. Suvir Dewan, Advocate, for respondent No.3.

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RAJBIR SEHRAWAT, J. (ORAL)

CM-7574-CII-2015

This is an application for condonation of delay of 109 days in re-filing the appeal.

Notice in the application.

On the asking of the Court, Mr. Suvir Dewan, Advocate, accepts notice on behalf of respondent No.3-Insurance Company and submits that he has no objection to the prayer made in the application.

In view of the above, the present application is allowed and the delay of 109 days in re-filing the appeal is condoned.

Main Case

The present appeal has been filed by the appellant against the award dated 26.04.2013 passed by the Motor Accident Claims Tribunal, Sonipat (in short, 'the Tribunal'), whereby an amount of Rs.5,87,000/- has been awarded as compensation with interest at the rate of 7.5% per annum on account of death of Parmanand.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts, as involved in the present appeal, are that on 18.02.2011, Permanand, along with Mukesh, was coming to his rented room after finishing his work. When they were standing at Badh Khalsa turning at G.T. Road waiting for a conveyance, then at about 7:00 PM, a car bearing registration No.DL-4CG-7629; being driven by respondent No.1 at a high speed and in a rash and negligent manner; came from the side of Delhi and struck against Permanand. Due to that, Parmanand fell down and suffered multiple injuries, including head injury. He was taken to Civil Hospital, Sonepat. However, respondent No.1 had fled away, along with his vehicle. Permanand was shifted to Saxena Hospital, Sonepat, and from there he was shifted to Pant Hospital/Lok Nayak Hospital, Delhi, where he expired on 23.02.2011. On these assertions, the claim petition was filed by the wife and three minor children of deceased-Parmanand; asserting therein that the deceased was of the age of 36 years and he was earning Rs.15,000/- per month by taking construction contracts. Accordingly, the compensation to the tune of Rs.20,00,000/- was claimed.

On being put to notice, respondents No.1 and 2 filed their joint written statement thereby denying the accident altogether. Respondent No.3-Insurance Company filed separate written statement and had taken routine preliminary objections, including that the offending vehicle was being driven in violation of the insurance policy. The driver of the offending vehicle was not having a valid and effective driving licence at the time of the accident. The offending vehicle was not having fitness certificate, route permit, registration certificate etc.

To substantiate the assertions made by the claimants in the claim petition, wife of the deceased, namely, Maha Rani appeared in the witness-box as PW2. Besides this, three more witnesses, including the police official, were examined by them.

On the other hand, respondents have examined ASI Khurshid Ali, i.e. the police official from CAW Cell, Mamla Market, Delhi, as RW1 and tendered in evidence Exhibit R1, a copy of the DD No.34 dated 23.02.2011, Police Station IP Estate, Delhi. No other witness was examined by them.

After assessing the material on record, the Tribunal has taken the notional income of the deceased as Rs.4,500/- per month. The age of the deceased has been taken between 41 to 45 years and accordingly, the multiplier of 14 has been applied. Therefore, the amount of Rs.5,67,000/- has been assessed as loss of dependency. Besides this, the Tribunal has awarded Rs.5,000/- as loss of estate, Rs.5,000/- for expenses incurred on funeral and transportation and Rs.10,000/- for loss of consortium. Accordingly, the compensation of Rs.5,87,000/- has been calculated by the Tribunal.

Arguing the case, learned counsel for the appellant has submitted that the Tribunal has wrongly applied the multiplier in the case. There was not even a single document on record before the Tribunal to show that the age of the deceased could have been more than 40 years. Rather, all the materials placed on record before the Tribunal were showing that the age of the deceased could have been between 35 to 40 years. Accordingly, it is submitted that the multiplier of 15 should have been applied. Learned counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77** in this regard; which has been upheld by Hon'ble the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others, (2017) 16 SCC 680**. Relying upon the said judgments, learned counsel has further submitted that even the compensation on account of loss of future prospects of the deceased have been wrongly denied to the claimants. As per the said judgment of the Supreme Court, the claimants should have been granted the benefit of future prospects of the deceased at the rate of 40% of the assessed income. Likewise, as per the same judgment, the claimants are entitled to an amount of Rs.16,500/- on account of funeral expenses and Rs.16,500/- on account of loss of estate. Learned counsel has also submitted that consortium at the rate of Rs.44,000/- each should have been awarded by the Tribunal.

On the other hand, learned counsel for respondent No.3-Insurance Company has submitted that the Tribunal has rightly awarded the compensation. No increase is called for, in view of the facts and circumstances of the case. However, learned counsel for the respondent-Insurance Company has not been in a position to rebut the legal proposition as argued by the learned counsel for the appellants; and as propounded in the judgments rendered by the Supreme Court in above-mentioned cases.

Having heard the counsels and having pursued the record, this Court finds substance in the arguments of the counsel for the appellant. So far as the age of the deceased is concerned, all the documents placed on record show that although the age of the deceased is differently mentioned in these documents, however, none of the documents mentions the age of the deceased to be more than 40 years. The entire material on record suggest the age of the deceased to be between 35 to 40 years. Therefore, the multiplier in the case should have been applied as is applicable to the age group of 36 to 40 years, which is 15 as per the judgments of the Supreme Court. This Court also finds substance in the arguments raised by the learned counsel for the appellants that the appellants should have been granted the compensation on account of loss of future prospects of the deceased at the rate of 40% of the assessed income; and the compensation on all other heads also have been increased to bring the same in terms of the judgments rendered by Hon'ble the Supreme Court in the cases of ***Sarla Verma*** (supra) and ***Pranay Sethi*** (supra).

Accordingly, the claimants are held entitled to the compensation as mentioned below:-

Sr. No.	**Heads**	**Amount Assessed**
1.	Monthly Income	Rs.4,500 per month
2.	Future Prospects @ 40%	Rs.4,500 + Rs.1,8000 = Rs.6,300
3.	Deduction @ One-Fourth	Rs.1,575
4.	Monthly Dependency	Rs.6,300 – Rs.1,575 = Rs.4,725
5.	Annual Dependency	Rs.4,725 X 12 =Rs.56,700
6.	Loss of dependency by applying multiplier @ 15	Rs.56,700 X 15 =Rs.8,50,500
7.	Loss of Consortium @ Rs.44,000 each	Rs.44,000 X 4 =Rs.1,76,000
8.	Funeral Expenses	Rs.16,500
9.	Loss of estate	Rs.16,500
	Total Compensation	Rs.10,59,500
	Compensation Awarded by the Tribunal	Rs.5,87,000
	Enhancement in Compensation	Rs.10,59,500 – Rs.5,87,000 =Rs.4,72,500

The interest on the enhanced amount shall remain the same as was awarded by the Tribunal. Respondent No.3-Insurance Company is directed to deposit the amount of enhanced compensation within a period of two months from today; with the Tribunal for onward disbursal to the claimants.

The present appeal is allowed, in the above-said terms.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

07.02.2023
adhikari

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No