

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

FAO 1641/2022 (O&M)

Date of decision: 20.01.2023

Lovepreet Singh and others

.....Appellants

Vs.

Shamsher Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Goel, Advocate for the appellants.

Nidhi Gupta, J.

CM 4439-CII/2022

Since there is delay of 2628 days in refiling the present appeal, aforesaid application has been filed seeking condonation of said delay.

It is stated in the application that the present appeal was filed within limitation on 2.11.2012. However, the Registry raised some objections on 15.11.2012, which were removed and case was re-filed on 22.11.2012, but again the Registry raised new objections on 13.12.2012. However, thereafter, the file is stated to have been intermingled with other decided cases and could not be located as the learned counsel for the appellants was also in the process of shifting his residence from Chandigarh to Mohali. It is stated in the application that it was only in November 2021 that it came to notice that the present appeal had not been re-filed.

Perusal of the application shows that grounds stated therein do not explain this inordinate delay satisfactorily. It is not clear when the Ld.

Counsel shifted residence from Chandigarh to Mohali. Moreover, as per law, delay of each day is required to be explained. Hence the application is dismissed.

Main Appeal.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4.70 lacs granted by Motor Accident Claims Tribunal, Patiala in MAC Case No. 70T of 4.5.12/10.6.2010.

The only contention on behalf of the appellants is that the deceased was doing agricultural work and also running dairy farm. It is stated that the deceased used to take 35 acres of land on lease from PW2 Mehar Singh; apart from which he was cultivating 8 acres of land owned by Urad Ram, father of the deceased and was therefore, earning Rs. 6 lacs per annum from agricultural work. It is submitted that apart from this the deceased was also earning Rs.2 lacs from dairy farming. It is submitted that in view of these facts the learned Tribunal has erred in taking the income of the deceased as only Rs.37,125/- per annum.

No other argument has been advanced on behalf of the appellants.

Heard learned counsel for the appellants.

Admittedly, the 8 acres of land in the ownership of the father of the deceased continues to be so held even now. It is settled law that in case of agricultural income the land remains with the family of the deceased. Therefore, loss of income has to be calculated only in relation to the cost that will be incurred for labour work and supervision of agricultural land.

As regards appellants' claim that the deceased used to take 35 acres of land on lease no convincing evidence has been led by them in support

of this assertion before the Id. Tribunal. PW2 Mehar Singh has stated in his cross-examination that he had 22 acres of land, out of which he had given 14 acres to his sons about five years ago, and was personally cultivating the remaining 5 to 6 acres of land himself. Even no document of lease has been placed on record by the Claimants to show that Mehar Singh was leasing out the land to the deceased; or any receipts have been produced by PW2 Mehar Singh to show that he was leasing the land to the deceased for Rs. 30,000/-.

Further, the learned Tribunal has returned a categoric finding that *“the claimants are failed to prove that the deceased was also running a dairy farm. There is absolutely no proof regarding his running dairy Farm. No document has been placed on record by the claimants to show that the deceased was running any such dairy.”*

Even now learned counsel for the appellants has placed nothing on record and is unable to support their claims with any proof. As such, I find no error in the assessment made by the learned Tribunal regarding the income of the deceased being Rs.37,125/- per annum and Award is maintained.

In view of the above discussion, the appeal is dismissed on the grounds of delay, as well as on merits.

(Nidhi Gupta)
Judge

20.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No