IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4906/2017 (O&M)

Date of decision: 16.05.2023.

Jagdish and another

………..Appellants

Vs.

Neelesh Kumar and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Shekhawat, Advocate for the appellants.
Mr. Rajneesh Malhotra, Advocate for the respondents.

Nidhi Gupta, J.

CM 14926-CII/2017

1. Since there is delay of 137 days in filing the appeal, aforesaid application under Section 5 of the Limitation Act has been filed seeking condonation of the said delay.

2. For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal.

3. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,67,400/- granted by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide Award dated 17.9.2016 passed in Claim Petition No. 231 of 2014 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are parents of the deceased Govinda who was aged 21 years at the time of death.

4. Ld. Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 31.8.2014 at about 11.30 a.m., due to rash and negligent driving of Truck bearing temporary registration No. HR-99PL7(Temp)-1405 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation. Liability to pay the compensation was fastened upon respondents jointly and severally.

5. Ld. Counsel for the appellants seeks enhancement of compensation on the ground that the Ld. Tribunal has taken the income of the deceased as only Rs.5200/- per month. It is submitted that the deceased was supplying newspapers in Village Barhana, Dimana and Chuliyana and getting salary of Rs.9000/- per month. It is submitted that the appellants had even examined PW3 Devender who was employer of the deceased and who had duly proved the salary of the deceased as Rs.9000/- per month. It is stated that accordingly, Ld. Tribunal is in patent error in taking the salary of the deceased as only Rs.5200/- per month.

6. It is further submitted by the ld. Counsel for the appellants that Ld. Tribunal has made a deduction of 50% towards personal expenses and a deduction of 1/4th ought to have been made. It is further submitted that the amount of Rs.1.25 lacs granted by the Tribunal under the conventional heads is on lower side and deserves to be enhanced. It is lastly submitted that rate of interest @ 7.5% per annum also deserves to be enhanced.

7. Ld. Counsel for the respondent Insurance Company submits that the Ld. Tribunal has awarded future prospects @ 50% whereas as per **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, the same ought to be 40%. It is stated that the deceased was a bachelor at the time of death and therefore, 50% deduction has been correctly made. It is also submitted that amount of Rs.1.25 lacs granted under the conventional heads is on the higher side since, as per latest judgments of Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & anr; others, C.A.No.2410-2412/2023; Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022;** and **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018,** a total amount of Rs.77000/- only can be granted under the conventional heads.

8. No other argument has been raised.

9. Heard ld. Counsel.

10. Perusal of the record of the case shows that it was pleaded case of the appellants before the Ld. Tribunal that deceased was getting salary of Rs.9000/- per month as a newspaper supplier. In support, appellants had examined PW3 Devender-employer of the deceased, who had deposed that the deceased used to supply about 450 newspapers to residents of Village Barhana, Dimana and Chuliyana from his Agency daily for which he was being paid a salary of Rs.9000/- per month. PW3 also proved certificate Ex.P4 in this regard. However, as the said witness PW3 Devender failed to produce any documentary evidence in support to prove the payment of salary to the deceased or any receipt issued by the deceased to the customers or any other record from his Agency in the form of books of accounts, ITRs, or Register of Employees etc., to prove either the employment or payment of salary of Rs.9000/- per month to the deceased, Ld. Tribunal only then assessed

notional income of the deceased as Rs.5200/- per month. I find no error in the same. Even at the time of arguments before this Court, ld. Counsel for the appellants has produced no record of the News Agency where the deceased is stated to have been employed prior to his death. However, it is brought to the notice of this Court by the ld. Counsel that as per relevant Minimum Wage Notification, minimum wage of a 'skilled upper worker' is Rs.5937/- per month. Accordingly, income of the deceased is taken as Rs.5937/- and rounded off to Rs.6000/- per month.

11. As regards contention of the ld. Counsel regarding conventional heads, ld. Counsel for the appellants is unable to dispute that as per latest judgment of Hon'ble Supreme Court in **Bhagat Singh, Mehmooda Bee** and **Bebi Giri** (supra) a sum of Rs.40,000/- in toto can be paid as consortium; Rs.15,000/- towards loss of estate; and Rs.15,000/- towards funeral expenses. Hon'ble Supreme Court has further held that in such cases an increase of 10% of said amount can be granted every three years. Accordingly, the total amount admissible to the appellants under the conventional heads would be Rs.44,000/- + Rs.16,500/- + Rs.16,500= Rs.77,000/-.

12. It is also undisputed that as per judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra), future prospects have to be granted to the appellants @ 40%. Further, admittedly, deceased was a bachelor, therefore, ld. Tribunal has correctly made a deduction of 50% towards personal expenses.

13. In view of the above discussion, present appeal is partly allowed and the compensation payable to the appellants is reworked as under:-

Sr.No.	**HEAD**	**MACT** (in rupees)	**IN APPEAL** (in rupees)
1.	Monthly income	5200/-	6000/-
2.	Future prospects	2600/- (50%)	2400/- (40%)
3	Total	7800/-	8400/-
4.	Deduction @ 50%	3900/-	4200/-
5.	Monthly loss of dependency	3900/-	4200/-

6	Multiplier applied	18	18
7	Total loss of dependency	3900x12x18= 8,42,400/-	4200x12x18= 9,07,200/-
8	Love and affection	1,00,000/-	--
9.	Loss of consortium	--	44,000/-
10.	Funeral expenses	25,000/-	16,500/-
11.	Loss of estate	--	16,500/-
12.	Total	9,67,400/-	9,84,200/-
	Rate of interest	7.5%	7.5%

14. The rate of interest, ratio of apportionment and manner of disbursement of compensation, as fixed by the Tribunal remains unchanged.

15. Appeal stands allowed in the above terms.

16. Pending Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

16.05.2023
Joshi

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**