

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-3544-2018 (O&M)

Date of decision: 10.05.2023

Surinder Kaur & Others

...Appellant(s)

Vs.

Harbans Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ruhani Chadha, Advocate
for the appellants.

Mr. Sudhir Paruthi, Advocate
for respondent No.2.

Mr. V. Ramswaroop, Advocate
for respondent No.3.

NIDHI GUPTA, J.

CM-12410-CII-2018

This is an application under Section 5 of Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 120 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.11,62,000/- granted by Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (hereinafter referred to as "the learned Tribunal") vide Award dated 04.09.2017

passed in MAC Petition RBT No.56 of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The three claimants are the parents, and major unmarried sister of deceased-Mandeep Singh who was aged about 27 years at the time of death.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Mandeep Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 23.01.2017 due to rash and negligent driving of bus bearing registration No.PB-08BC-9426 (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 granted compensation as above along with interest @ 7.5% per annum from date of filing of claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds:

a) that at the time of death, deceased was a Generator Mechanic and earning Rs.15,000/- per month. It is submitted that PW1/appellant-claimant No.1/mother of the deceased has duly mentioned the said fact in her affidavit (Exhibit PA). It is submitted that though admittedly, PW1 did not have any documentary proof regarding income of her deceased son however, in view of the categorical assertion

on part of the claimants in this respect, it is submitted that income of the deceased should have been taken as at least that of a skilled labourer, whereas learned Tribunal has taken income of the deceased as that of an unskilled labourer as only Rs.7,458.56/- per month. It is submitted that as per relevant Minimum Wage Notification, minimum wages admissible to a semi-skilled labourer are Rs.8,238/- per month, and that to a skilled labourer are Rs.9,135/- per month;

b) that sum of only Rs.20,000/- has been granted under conventional heads. In support, learned counsel relies upon judgment of Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram Vs. Mukesh Kumar Yadav (SC) Law Finder Doc ID # 1888548**.

4. In response, it is submitted by learned counsel for respondent No.3/Insurance Company that future prospects have been granted on higher side. It is submitted that nothing has been produced by the claimants to prove income or employment of the deceased.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows that claimant No.1/mother of the deceased had appeared as PW1 and specifically stated in her affidavit (Exhibit PA) that the deceased was working as a Generator Mechanic. Though admittedly, there is no documentary proof of the alleged income of the deceased to be Rs.15,000/- per month, however, in my view, there is no reason to doubt the submission made by the claimants on affidavit. Accordingly, in my view, in the present case

it would serve the ends of justice to take income of the deceased as that of a semi-skilled labourer as Rs.8,238/- rounded off to Rs.8,240/- per month.

8. Age of the deceased was proven to be 27 years at the time of death on the basis of his Aadhaar card wherein his date of birth is mentioned as 24.04.1989. Accordingly, an addition of 40% is to be made towards future prospects, and not 50% as done by the Tribunal. As the deceased was bachelor at the time of death, learned Tribunal correctly made a deduction of 50% towards personal expenses. Multiplier of 17 has been correctly applied. However, learned Tribunal is in error in granting only Rs.20,000/- under conventional heads whereas as per law, the claimants are entitled to Rs.77,000/- under conventional heads. Therefore, compensation as admissible to the claimants is re-worked as follows:-

Heads	By MACT	By this Court
Income	Rs.7,458.56/- per month	Rs.8,240/- per month
Future prospects	(50%)	(40%) Rs.8,240/- + Rs.3,296/- = Rs.11,536/-
Deduction	(50%)	(50%) Rs.11,536/- - Rs.5,768/- = Rs.5,768/-
Multiplier	(17)	(17) Rs.69,216/- x 12 x 17 = Rs.11,76,672/-
Conventional heads	Rs.20,000/-	77,000/-
Total	Rs.11,61,159/- (rounded off to Rs.11,62,000/-)	Rs.12,53,672/-

9. Interest @ 7.5% as granted by the learned Tribunal is maintained. Ratio of apportionment and manner of disbursement of compensation as determined by the Tribunal is maintained.
10. Present appeal accordingly, stands **allowed** in above terms.
11. Pending application(s) if any also stand(s) disposed of.

10.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No