IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

259 **FAO-7633-2017 (O&M)**
Date of decision: 09.03.2023

Saroj & Others **...Appellant(s)**

Vs.

Ajay Kumar & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Deepak Girotra, Advocate for the appellants.

Mr. Pradeep Kumar, Advocate for respondents.

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NIDHI GUPTA, J.

CM-25124-CII-2017

This is an application under Section 5 of Limitation Act read with Section 151 CPC for condonation of delay of 117 days in filing the appeal.

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

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.27,47,500/- awarded by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the learned Tribunal") vide Award dated 04.02.2017 passed in MACT Case No.79 of 2015 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as “the Act”). Claimants are the widow, three minor children and father of deceased-Krishan.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Krishan had died due to injuries suffered by him in a motor vehicular accident that took place on 30.07.2015 due to rash and negligent driving of dumper bearing registration No.HR-46D-9127 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. 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 ground;

a) that learned Tribunal has assessed income of the deceased on lower side. It is submitted that deceased used to cultivate 22 acres of agricultural land and was earning Rs.1,25,000/- per month from agriculture. It is stated that from copies of Jamabandi (Exhibit P33 to Exhibit P35), it is clear that deceased was earning Rs.1,25,000/- per month from agriculture;

b) that rate of interest of 7.5% per annum as granted by learned Tribunal is on lower side.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. a) Learned Tribunal awarded compensation to the claimants in following manner:-

	Date of accident	30.07.2015
Age of deceased	39 ½ years	
Claimants	Wife and three minor children	
Sr. No.		
1.	Income	Rs.9,000/- P.M. as per DC Rate
2.	Add 50% of increase on account of future prospects	Rs.9,000/- + Rs.4,500/- = Rs.13,500/-
3.	Deduction 1/4th as number of dependents are four (4)	Rs.13,500/- - Rs.3,375/- = Rs.10,125/-
4.	Multiplier (annualized)	Eighteen (15)
5.	Multiplier	Eighteen (16) Rs.10,125/- x 12 x 15 = Rs.18,22,500/-
6.	Loss of dependency	Rs.18,22,500/-
7.	Medical expenses	--
8.	Loss of consortium to spouse	Rs.1,00,000/-
9.	Loss of love and affection for three minor children and father	Rs.2,00,000/- each child plus Rs.1,00,000/-
10.	Loss of estate	Rs.1,00,000/-
11.	Funeral expenses	Rs.25,000/-
12.	**Total**	**Rs.27,47,500/-**

b) Perusal of record of the case shows that though it was the pleaded case of the claimants before learned Tribunal that deceased was *"agriculturist by profession as owner in cultivating possession of two acres of land, and was also cultivating about 15 acres of land of his father and also cultivating the land measuring 22 acres of village Kuldeep and Baljeet, residents of village Madina by taking their land on lease and earning Rs.1,25,000/- per month."* To prove the above alleged income of the deceased, said Kuldeep and Baljeet were produced as PW3 and PW4. However, PW3 and PW4 in their respective statements had clearly stated that they had no documentary proof to show that deceased was cultivating their land on *theka*. They further admitted that they had not issued any receipts in respect of any lease money received. Even no rent/lease deed was placed on record by the claimants to show that deceased was cultivating land on lease. Thus, income from agriculture was not proved;

c) Even otherwise, it is an established position in law that income from agriculture is not taken into consideration while computing compensation as, the same would remain available with the claimants even after the death of the deceased. As such, there is no loss from agricultural income. Accordingly, learned Tribunal assessed notional income of the deceased as Rs.9,000/- on the basis of Deputy Commissioner rates for relevant period. Further, perusal of Award shows that Rs.7,00,000/- has been granted to appellants No.2 to 5 towards loss of love and affection, whereas as per law only Rs. 2 lacs could have been granted under this head. Even Rs.1,00,000/- has been granted towards loss of estate which is on higher side for which only Rs.15,000/- is admissible.

7. Accordingly, no ground is made out to interfere in the impugned Award and present appeal therefore, stands **dismissed.**

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

09.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

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