

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117

FAO-6877-2018 (O&M)
Date of decision: 20.02.2023

Smt. Mona & Others

...Appellant(s)

Vs.

Raghubir Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Kanwardeep Singh, Advocate for the appellants.

NIDHI GUPTA, J.

CM-2388-CII-2023

This is an application under Section 151 CPC seeking condonation of delay of 835 days in re-filing the application for restoration of appeal.

It has been submitted that appeal was dismissed by this Court for non-prosecution vide order dated 03.03.2020. An application was filed for restoration of the appeal.

It has been submitted in the present application seeking condonation of delay that Registry had raised objections in the matter on 06.03.2020 whereafter inadvertently, paper book of the application for restoration was put in some other brief by Clerk of the counsel. As a result of which, paper book of the application for restoration could not be traced till 18.01.2023 and delay of 835 days has been occasioned on account thereof. Application is duly accompanied by affidavit of concerned counsel.

After going through the contents of the application, the same is allowed and delay of 835 days in re-filing the application for restoration of appeal is condoned and appeal is restored to its original number.

CM-24359-CII-2018

This is an application under Section 151 CPC for condonation of delay of 247 days in re-filing the appeal.

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

CM-24360-CII-2018

This is an application under Section 5 of Limitation Act for condonation of delay of 1017 days in filing the appeal.

After going through the contents of the application, this Court is of the opinion that no cogent reasons and/or sufficient cause has been shown to condone the extraordinary and inordinate delay of 1017 days in filing the appeal. It is clear, from the constant delay occasioned in this case at every step that appellants have adopted a casual and cavalier attitude in pursuing this appeal. Accordingly, present application seeking condonation of extraordinary and inordinate delay of 1017 days in filing the appeal, is dismissed.

CM-24361-CII-2018

This is an application under Section 151 CPC for exemption from filing certified copy of Award dated 03.02.2014 and

permission to place on record true typed/photocopies of the same.

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

CM-24362-CII-2018

This is an application under Section 151 CPC seeking permission to place on record copy of Form-J (Annexure A1) (colly).

After going through the contents of the application, the same is allowed subject to all just exceptions and Form-J (Annexure A1) (colly) is taken on record.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.11,38,608/- awarded by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as “the learned Tribunal”) vide Award dated 03.02.2014 passed in MACT Case No.117 of 2013/478-13 filed under Section 166/140 of the Motor Vehicles Act (hereinafter referred to as “the Act”). Claimants are widow, parents and minor son of deceased-Sandeep Kumar.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Sandeep Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 08.08.2011 due to the rash and negligent driving of truck bearing registration No.HP-12A-9998 (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 compensation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia, on the ground that;

a) learned Tribunal has taken income of the deceased as only Rs.4,500/- which is on lower side. It is submitted that deceased was running Kiryana shop, and also cultivating land. It is submitted that accordingly, the deceased was earning Rs.13,000/-per month. It is further submitted that deceased had agricultural income as is also evident from J-Forms, which were also on record before the learned Tribunal, thus, learned Tribunal is in error in taking income of the deceased on lower side;

b) nothing has been granted by way of future prospects and therefore, compensation deserves to be enhanced.

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

5. I have heard learned counsel for the appellants.

6. Perusal of the record of the case shows that appellants have failed to produce any documentary evidence in support of their contention that deceased was running a Kiryana shop at the time of death. Bills (Mark-A to Mark-J) placed on record by the appellants were not proved in accordance with law, and could therefore, not be considered. Further, as per law laid down by the Courts, agricultural income is not taken into account while calculating income of the deceased as, land is still available with the appellants for cultivation. It is established position in law

that income from agriculture is not included while assessing income for purposes of computing compensation payable to claimants as, claimants are not deprived of the agricultural land and therefore, said income from land continues even after death of the deceased. Thus, it cannot be said that there is loss of agricultural income.

7. In view of these facts, I find no error in the assessment made by the learned Tribunal in taking income of the deceased as Rs.4,500/- per month on the basis of relevant Minimum Wage Notification. 50% was added towards future prospects. Therefore, income of deceased was taken as Rs.6,750/- per month. As there are four claimants 1/4th was rightly deducted towards personal expenses. As per post mortem report (Exhibit P3) and as pleaded by the appellants, age of the deceased was taken as 25 years and accordingly multiplier of 18 was applied. Consortium of Rs.25,000/- was granted to appellant No.1/widow of the deceased. Further sum of Rs.10,000/- was granted towards transportation and last rites; and Rs.10,000/- towards loss of estate. Thus, total compensation awarded comes to Rs.11,38,608/-.

8. In my view, compensation as awarded by learned Tribunal is just and fair in the facts and circumstances of the present case.

9. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Moreover, compensation awarded upon the death of a near and dear loved one cannot be made a market negotiation, where every penny

has to be calculated and drawn. All that has to be determined in the facts of a given case is, that the compensation accorded is 'just'. In my considered view, in the present case, the learned Tribunal has awarded a very 'just' compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176***, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

10. Present appeal therefore, stands dismissed, on merits, as well as on grounds of delay.

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

20.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No