

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO 1276/2020(O&M)****Date of decision: 09.05.2023.****Karamjit Kaur and others****.....Appellants.****Vs.****Daler Singh and others****.....Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr.Paras Jagga, Advocate for the appellants.****Nidhi Gupta, J.****CM 3453-CII/2020**

1. Since there is delay of 39 days in refiling the appeal, aforesaid application has been filed u/s 151 Code of Civil Procedure, 1908 seeking condonation of said delay.

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

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3. Since there is delay of 06 days in filing the appeal, aforesaid application has been filed u/s 5 of the Limitation Act,1963 seeking condonation of said delay.

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

MAIN CASE

5. Present appeal has been filed by the claimants seeking enhancement of compensation of **Rs.7,48,200/-** granted by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide Award dated 27.2.2019 passed in MACP 151/2018 u/s 166 of the Motor Vehicles

Act,1988 (hereinafter referred to as 'the Act'). The four claimants were the parents, major sister and minor brother of deceased Gurtej Singh.

6. 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 8.2.2018 due to rash and negligent driving of School Bus bearing registration No. PB-11-BF-2749 (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 @ 8% per annum from the date of filing of the claim petition till realisation. Respondents were jointly and severally held liable to pay the compensation.

7. Learned counsel for the appellants seeks enhancement of compensation on the ground that income of the deceased had been taken on the lower side as only Rs.9500/- per month. It is submitted that monthly income of the deceased ought to have been taken as Rs.30,000/- per month as, the deceased was working as an electrician.

8. The second ground on which enhancement is sought is that the ld. Tribunal has made a deduction of 50% towards personal expenses. It is submitted that as the claimants are four in number, a deduction of 1/5th ought to have been made.

9. No other argument has been raised.

10. Heard ld. Counsel.

11. Perusal of the record of the case shows that though it was pleaded case of the appellants before the Tribunal that prior to his death deceased was working as an Electrician and earning Rs.30,000/- per month,

however, except for the bald statement on the part of the claimants no corroborative evidence whatsoever was led by them in support of their said contention. Nonetheless in view of the said assertion on the part of the appellants, Id. Tribunal took the deceased to be a skilled worker and assessed his income as Rs.9500/- per month on the basis of relevant Minimum Wage Notification. Even now nothing has been produced to prove the income of the deceased as Rs.30,000/- p.m as claimed. Thus, I find no ground is made out to interfere in the said assessment as made by the Ld. Tribunal.

12. It is undisputed that the deceased was not married at the time of accident accordingly, Id. Tribunal has correctly made a deduction of 50% towards personal expenses.

13. Further, Ld. Tribunal in accordance with decision of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, has made an addition of 40% towards future prospects. Thus, the monthly income of the deceased was calculated as Rs.13,300/- per month. After 50% deduction on account of personal expenses, income comes to Rs.6650/- per month, and annual dependency comes to Rs.79,800/-. As deceased was admittedly 20 years of age at the time of his death, Ld. Tribunal has correctly applied multiplier of 18. Thus, total loss of dependency is calculated to be Rs.14,36,400/-. An additional amount of Rs.30,000/- has been granted towards medical expenditure on the ground that the deceased remained hospitalised for more than 15 days from 8.2.2018 to 20.2.2018 and then from 25.2.2018 to 1.3.2018. Ld. Tribunal has further awarded Rs.15,000/- towards loss of estate, and Rs.15,000/- towards funeral expenses. Thus, learned Tribunal calculated the total compensation to be Rs.14,96,400/-.

14. However, further perusal of the Award reveals that Ld. Tribunal has deducted 50% of the above compensation awarded to the claimants on account of contributory negligence made out against the deceased. But no argument in respect of contributory negligence has been raised by the Ld. Counsel at the time of hearing of the case. The findings of the Ld. Tribunal in respect of contributory negligence are contained in paras 11 and 13 of the impugned Award, and are as follows:

"11. The learned counsel for the respondent no.3 argued that in fact the bus in question was going ahead of motorcycle of the deceased. The driver of the bus had to apply the brakes. In such like situation, Gurtej Singh should have controlled his motorcycle. However, Gurtej Singh could not control his motorcycle as he had not maintained proper distance from the bus in question and his motorcycle was at excessive speed and in these circumstances, it cannot be said that the accident occurred due to rash and negligent driving of bus by respondent no.1, rather the accident occurred due to negligence on the part of the deceased. The learned counsel for respondent no.3 referred to some part of the cross-examination of CW2 Aman Singh, who stated that the motorcycle was at a distance of 4-5 feet from the bus in question. The bus was at the speed of 50-60 km per hour, whereas the speed of motorcycle was 40 km per hour. The learned counsel for respondent no.3 has argued that CW2 Aman Singh has stated that they were following the bus from the distance of 2-3 km. The version of CW2 Aman Singh is not correct. In case they were following the bus from such a distance, the motorcycle could not be at such short distance from the bus in case the same was being driven at the speed of 40 km per hour. He has argued that it is absolutely clear that deceased Gurtej Singh was driving the motorcycle rashly and negligently and therefore the applicants are not entitled

to any compensation under Section 166 of the Motor Vehicles Act.

13. After giving anxious thoughts to the rival contentions and going through the record of the case, this Tribunal is of the considered view that the instant case is a case of contributory negligence on the part of the deceased. From the evidence on record, it is established that the respondent no.1 had applied the brakes of the bus with full force suddenly and due to that reason the bus came to halt in the middle of the road. Deceased Gurtej Singh could not control the motorcycle and the same hit into the rear side of the bus. No doubt, it was rash and negligent act on the part of respondent no.1 to apply the brakes of the bus in the middle of the road, without taking any precaution. However, at the same time, Gurtej Singh should also have maintained proper gap from the bus in question so as to control the motorcycle in any such like exigency. However, he could not control the motorcycle when the respondent no.1 applied the brakes of the bus. Therefore, Gurtej Singh was also negligent in driving the motorcycle at such a speed and without maintaining proper gap from the bus. In the opinion of this Tribunal, it is a case of contributory negligence and the extent of negligence of the deceased and respondent no.1 is 50:50".

15. Above findings of the learned Tribunal remain unassailed. Even otherwise, in view of the discussion hereinabove, I find no merit in the present appeal and the same is hereby, **dismissed**.

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

(Nidhi Gupta)
Judge

09.05.2023
Joshi

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