IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218)

CM No. 835-CII of 2015 in/and
FAO No. 298 of 2015
Date of Decision : 19.01.2023

Khushwinder Singh and others

...Appellants

Versus

Iqbal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. L.S. Lakhanpal, Advocate for
Ms. Gurvir Kaur, Advocate for the appellants.

Mr. Surinder Garg, Advocate for respondents No. 1 and 2.

Mr. R.C. Gupta, Advocate for respondent No. 3.

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Harsimran Singh Sethi J. (Oral)

CM-835-CII-2015

The present application has been filed seeking condonation of delay of 1431 days in filing the appeal.

Learned counsel for the appellants argues that appellants No. 2 and 3 were minor at the time when the Award of compensation was passed hence, they did not knew about the rights, which accrued to them as per the settled principle of law, which were not extended by the Motor Accident Claims Tribunal, Ferozepur hence, the appeal could not be preferred within the time frame. Learned counsel for the appellants further argues that the appellants undertake not to claim the interest for these 1431 days in case, their claim for enhancement for compensation is allowed by this Court.

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Reply to the application has been filed, wherein, it has been mentioned that keeping in view the delay, the application should be dismissed without considering the appeal on merits.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that the appellants No. 2 and 3, who were the children of the deceased, were minor at the time when the Award of compensation was passed. That being so, the benefit of the legislation, which has been enacted to help the family of the deceased, especially the minors, should be given effect to in a manner so that the family does not suffer any prejudice in regard to their entitlement. Though, the aspect of delay needs to be taken into consideration so as to balance the equities. In the present case, the appellants have already undertaken not to claim interest on the enhanced compensation in case, their plea for enhancement is accepted by this Court, for the period of delay.

Keeping in view the above, the application seeking condonation of delay of 1431 days in filing the appeal is allowed with the condition that in case, their appeal for enhancement of compensation is accepted, they will not be granted interested for the period in question.

FAO No. 298 of 2015

The present appeal has been filed challenging the Award of the Motor Accident Claims Tribunal, Ferozepur dated 21.09.2010 by which, the claimants were held entitled for a compensation of ₹2,95,000/-. It may be noticed here that the deceased Kulbir Singh, who was aged 38 years, met with an accident on 05.06.2009. Keeping in view the intensity of the collusion between the vehicles, severe injuries were suffered by Kulbir

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Singh and he succumbed to the same at the spot of incident itself. Keeping in view the said accident taken place, an FIR No. 76 dated 05.06.2009 was registered under Section 304-A/427 of the Indian Penal Code. From the evidence lead, it transpired that Kulbir Singh, who was agriculturist by profession, was cultivating and supervising 6 acres of land apart from running a dairy farm, which consisted of 10 to 12 buffaloes. The income of the deceased Kulbir Singh was ₹15,000/- per month. The said claim was contested by the Insurance Company on merits and the learned Tribunal Court on the basis of the evidence, which had come on record and came to the conclusion that the income of the deceased was ₹3,600/- per month, which was in tune of the minimum wage fixed by the State. The income of Kulbir Singh was further reduced by 1/3rd keeping in view the expenses incurred towards maintaining himself and the annual dependency of the claimants was assessed at ₹28,800/-. Keeping in view the age of the deceased, multiplier of 10 was assessed. The compensation was assessed at ₹2,88,000/-, ₹5,000/- was given as consortium and ₹ 2,000/- was given as expenses for the last rites and total assessed compensation was ₹ 2,95,000/-. The said order is under challenge in the present appeal.

Learned counsel for the appellants argues that though, the appellants are not challenging the fixation of the income but, 1/3rd deduction in the said income is contrary to the settled principle of law as there were dependent children, only 1/4th of the income could have been deducted as expenses, which the victim would have incurred toward maintaining himself had he been alive. Learned counsel for the appellants further submits that in the present case, keeping in view the age of the deceased, the multiplier of 15 is to be applied keeping in view the judgment of Hon'ble Supreme Court

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of India passed in SLP(Civil) No. 25590 of 2014 titled as ***National Insurance Company Limited Vs. Pranay Sethi and others,*** decided on 31.10.2017. Further claim is that as per the judgment passed in Civil Appeal No. 2705 of 2020 titled as ***United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others,*** decided on 30.06.2020, all the claimants are entitled for consortium of ₹40,000/- each. Further, ₹15,000/- was liable to be paid as expenses for the last rites whereas only ₹2,000/- have been paid and for the lost of estate, a sum of ₹15,000/- was liable to be paid.

Learned counsel appearing on behalf of the Insurance Company has not been able to rebut the claim as being raised by the learned counsel for the appellants keeping in view the settled principle of law.

Keeping in view the fact that as the learned counsel appearing on behalf of the Insurance Company has not been able to rebut that as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Pranay Sethi's case (supra)*** as well as ***Satinder Kaur @ Satwinder Kaur's case (supra),*** the appellants are entitled for the compensation as detailed hereinafter :-

Wages	3,600/-
Future Prospects	40% = 1440/-
Total	5,040/- (3600+1440)
Yearly	5,040 x 12 = 60,480
Deduction 1/4th	15,120/-
Dependency per year	45,360 (60,480+15,120)
Multiplier	6,80,400/- (45,360 x 15)
Consortium	1,20,000/- (@ 40,000/- x 3)
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Total compensation	8,30,400/-

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Learned counsel for the appellants submits that as the appellants have been held entitled for the enhanced compensation, they be only paid interest on the said from the date of filing of petition till the date of grant of the Award only and not thereafter, which is acceptable to them as the appeal was filed after a delay, which delay has been condoned keeping in view the fact that the appeal was filed under a beneficial legislation.

Keeping in view the above, the appellants are held entitled for the total compensation to the tune of ₹8,30,400/-. The compensation already paid as per the Award of the Tribunal be deducted from the total compensation for which the appellants have been held entitled for in the order and the remaining amount be released to them in equal share amongst the present appellants within a period of three months from the date of receipt of certified copy of this judgment.

January 19, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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