

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-15911-2018 (O&M)
Date of decision: 10.03.2023

Mahender Singh & Others

...Appellant(s)

Vs.

Rajesh Kumar & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajesh Bansal, Advocate for the appellants.

NIDHI GUPTA, J.

CM-28478-CII-2018

This is an application under Section 5 of Limitation Act for condonation of delay of 4890 days in filing the appeal.

Application is duly supported by affidavit of appellant No.1. The only ground taken in the application is that after passing of Award dated 04.03.2005 by learned Motor Accident Claims Tribunal, Panipat, the applicant approached counsel before the trial Court for filing present appeal before this Court and brief was handed over to Sh. Satish Kumar Saini, Advocate, Enrolment No.P-2999/1999 for filing the appeal. Thereafter, applicant approached said counsel to enquire about status and progress of the appeal and each time he was informed that appeal has been admitted and as and when it would become mature for hearing, intimation would be given to the applicant. It is further submitted that as no information was received by the

applicants/appellants, they approached Registry of this Court and found out that no such appeal had been filed.

Thereafter, on 04.09.2018, applicants/appellants applied for certified copy of impugned Award dated 04.03.2005 which was received by them on 12.09.2018 and appeal was filed immediately thereafter. In support of his contention, learned counsel for the applicants/appellants relies upon judgment of this Court in ***FAO-6856 of 2015 titled as "Smt. Kamlesh (Deceased) thr her LRs Etc. Vs. Bhagat Singh & Others"***.

I have heard learned counsel for the applicants/appellants.

Perusal of application shows that no detail in the form of dates and/or application number has been provided by the applicants to show as to when they approached Registry of this Court to enquire about the appeal, or on what date they got knowledge that no appeal has been filed against the impugned Award. It has been held by Hon'ble Supreme Court that delay of each day must be satisfactorily explained. However, in the present case, no sufficient cause has been shown to merit condonation of the extraordinary and inordinate delay of 4890 days in filing the appeal. Accordingly, present application stands **dismissed**.

MAIN CASE

Present appeal has been filed by the appellants seeking enhancement of compensation of Rs.1,58,200/- awarded by Motor

Accident Claims Tribunal, Panipat (hereinafter referred to as “the learned Tribunal”) vide Award dated 04.03.2005 passed in MACT Case No.40 of 2003 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). Claimants are parents and two brothers of deceased-Vinod Kumar.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Vinod Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 24.01.2003 due to rash and negligent driving of truck bearing registration No.HR-13GA-0260 (hereinafter referred to as “the offending vehicle”) being driven and owned by respondent No.1, and insured by respondent No.2. Learned Tribunal awarded compensation as noted above along with interest @ 6% 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 was in error in taking income of the deceased as only Rs.2,100/- per month whereas deceased was doing dairy farming and earning Rs.8,000/- per month;

b) that only Rs.7,000/- has been granted under conventional heads which deserves to be enhanced in view of law laid down by Hon’ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma Vs.**

Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680;

c) that appellants are entitled to Rs.1,00,000/- each towards loss of estate and cost of litigation whereas only a sum of Rs.500/- has been granted as pleader fee;

d) that deceased was only 18 years of age at the time of accident and therefore, future income should be increased by 100%;

e) that interest has been granted @ 6% per annum which should be enhanced to 18% per annum;

f) that appellants were totally dependent on the deceased who was running affairs of the house and therefore, deduction of 1/4th ought to have been made towards personal expenses whereas deduction of 50% has erroneously been made by learned Tribunal.

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

5. I have heard learned counsel for the appellants.

6. a) Perusal of record of the case shows that as per post mortem report (Exhibit P10), age of the deceased was verified to be 18 years. Though it was stated by the appellants that deceased was earning Rs.8,000/- per month, however, except testimony of father/appellant No.1, there was no proof of income of deceased and no oral or documentary evidence was led by the appellants in support of this claim. Accordingly, learned Tribunal had taken income of deceased to be Rs.2,100/- per month as that of a casual labourer. I find no error in the assessment of notional income as made by the learned Tribunal;

b) Admittedly, deceased was a bachelor at the time of accident, therefore, deduction of 50% made towards personal expenses is correct;

c) As per law prevalent at the time, learned Tribunal had applied multiplier of 12 and calculated a total sum of Rs.1,51,200/- as compensation;

d) Further, Rs.7,000/- was granted to the appellants towards funeral expenses and therefore, total compensation of Rs.1,58,200/- was granted. I find the compensation granted to the appellants to be just and fair in the facts and circumstances of the case.

7. 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.

8. For the reasons stated above, I find no ground is made out to interfere in the impugned Award. Present appeal stands, **dismissed** on grounds of delay as well as on merits.

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

10.03.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No