

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.15874 of 2018 (O&M)

Date of Decision : 20.03.2023

Seema and Others

....Appellants

VERSUS

The New India Assurance Co. Ltd. and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Umesh Kumar, Advocate for the appellants.

Mr. Ajay Singla, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

CM-28436-CII-2018

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 134 days in filing the present appeal.

For the reasons stated in the application, the same is allowed. The delay of 134 days in filing the present appeal is condoned, subject to the condition that no interest would be awarded for the period of delay in filing the appeal.

FAO No.15874 of 2018

The only challenge in the present appeal is to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the 'Tribunal') vide award dated 02.02.2018 whereby an amount of Rs.10,72,500/- was awarded to the claimant-appellants on account of death of Balwant Singh (hereinafter referred to as

the 'deceased'). Since the factum of the accident is not in dispute, the facts are not being adverted to for the sake of brevity.

Learned counsel for the claimant-appellants would contend that the income of the deceased has wrongly been assessed as Rs.6,000/- per month on the basis of guess work. It is further the contention that the minimum wages at the time of the accident for an unskilled worker was Rs.7,210/- per month. It is further the contention that a consolidated amount of Rs.60,000/- has been awarded under the conventional heads as well as under the head of loss of consortium, which is not in consonance with the law laid down by the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**. Learned counsel for the claimant-appellants has pointed out that the Tribunal has rightly applied the deduction of 1/4th towards personal expenses of the deceased and an addition of 25% towards loss of future prospects has also been correctly made.

Per contra learned counsel for respondent No.1 has contended that in view of the fact that there was no evidence on the record regarding income of the deceased, the Tribunal has rightly assessed the income of the deceased as Rs.6,000/- per month. The deceased was 43 years of age and the Tribunal has wrongly applied the multiplier of '15' instead of '14'. It is further contended that there is no scope of any enhancement of compensation.

In the present case the Tribunal has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.6,000/-
2	Annual income	[6,000 x 12] =Rs.72,000/-
3	Deduction 1/4 th	[72,000-18,000] =Rs.54,400/-
4	Future prospects @ 25%	[54,000+13,500] = Rs.67,500/-
5	Multiplier of 15	[67,500x15] = Rs.10,12,500/-
6	Funeral expenses and transportation charges	Rs.30,000/-
7	Loss of Consortium	Rs.30,000/-
8	Total Compensation	Rs.10,72,500/-
	Interest	8% per annum

I have heard learned counsel for the parties.

There is no evidence on the record regarding the income of the deceased and in the absence of any evidence the Tribunal instead of resorting to guess work ought to have assessed the income of the deceased as per the minimum wages prevalent at the time of death of the deceased i.e. @ Rs.7,210/- per month. The income of the deceased is hence assessed as Rs.7210/- per month as per the minimum wages prevalent at the relevant time. Further, as per the law laid down by the Hon’ble Supreme Court, the Tribunal has rightly applied the deduction of 1/4th towards personal expenses of the deceased and an addition of 25% has rightly been made towards loss of future prospects. However, as per the law laid down by the Hon’ble Supreme Court in the case of **Sarla Verma** (*supra*), keeping in view the age of the deceased who was 43 years of age, a multiplier of ‘14’ ought to have been applied. The claimant-appellants would also be entitled to compensation under the conventional heads as well as towards loss of

consortium as per the settled law in the cases of **Magma General Insurance Company Limited** (*supra*) and **N. Jayasree** (*supra*).

In view of the above, the enhanced amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income of the deceased	Rs.7,210/-
2	Annual Income of the deceased	[7210 x 12] = Rs.86,520/-
3	Annual dependency of the claimants after deduction of 1/4 th	[86520 – 21630] = Rs.64,890/-
4	Future Prospects @ 25%	[64890 + 16222] = Rs.81,112/-
5	Multiplier of 14	[81112 x 14] = Rs.11,35,568/-
6	<u>Loss of Consortium</u> (i) Parental (3 children) (ii) Spousal	Rs.1,32,000/- (44000 x 3) Rs.44,000/- (Total Rs.1,76,000)
7	Loss of Estate	Rs.16,500/-
8	Funeral Expenses	Rs.16,500/-
	Total Compensation	Rs.13,44,568/-
	Amount Awarded by the Tribunal	Rs.10,72,500/-
	Enhanced amount	Rs.2,72,068/-

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% from the date of the filing of the claim petition till the realization of the entire amount. It is, however, made clear that for the period of delay of 134 days in filing the present appeal, no interest shall be payable to the claimant-appellants on the enhanced amount of compensation. The enhanced amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

20.03.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

