

2024 PHHC 090342



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3335-2024 (O&M)
Date of Decision: 12.08.2024

The New India Assurance Co. Ltd. ... Appellant
Versus

Mansab Ali and Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. J. K. Sehrawat, Advocate for the appellant.

HARKESH MANUJA, J.

C.M. 11967-CII-2024

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 26 days in filing the appeal.

Upon hearing learned counsel for the appellant and for the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been made out to condone the delay in filing the appeal. Thus, the application is allowed and delay of 26 days in filing the appeal is condoned.

MAIN APPEAL

1. By way of present appeal, the appellant/insurance company lays challenge to an award dated 31.10.2023 passed by the learned Motor Accident Claims Tribunal, SAS Nagar (for brevity, "the Tribunal"), whereby compensation of Rs.30,10,765/- has been awarded to the claimants along with interest @ 9% per annum.

2. The claimants being dependents of, Sajad Abdul Basit, filed claim petition before the Tribunal praying for grant of compensation to the

tune of Rs.1,00,00,000/- on account of his death in a vehicular accident which took place on 26.11.2019 alleging rash and negligent driving by respondent No.5-driver.

3. Learned Tribunal held that accident occurred due to rash and negligent driving of respondent No. 5/ driver and after assessing income of the deceased @ Rs.12,000/- per month, awarded compensation in the following manner-

S.No	Heads of Claim	Amount (in Rs)
1.	Income of deceased	Rs.12,000/- per month
2.	Income after addition of 50% of income as future prospects.	Rs. 18,000/-
3.	Income after deduction 1/4 th personal living expenses	Rs. 13,500/- per month
4.	Compensation after applying multiplier 18	Rs.13,500/- X 12 X 18= Rs.29,16,000/-
5.	For loss of love and affection	Rs. 50,000/-
6.	For funeral Expenses	Rs. 25,000/-
7.	Expenses on medical treatment as per medical bills	Rs. 19,765/-
	Total	Rs.30,10,765/-

4. Being aggrieved against the award dated 31.10.2023, the present appeal has been preferred by the appellant/insurance company on the question of quantum of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver as recorded in

favour of respondents-claimants are not in dispute, therefore, the same are not being repeated here.

5. Learned counsel of the appellant/insurance company submitted that there was a delay of 32 days in registration of the FIR and the same raises suspicion about the manner of accident. To substantiate his argument he *inter-alia* contended that the alleged accident took place on 26.11.2019, the deceased expired on 27.12.2019 whereas the FIR was lodged on 28.12.2019, on the statement of Jawad Ahmad (pillion rider) against the unknown persons. He further submitted that surprisingly the rider of the vehicle (deceased) died after the alleged accident, whereas the pillion rider did not receive any injury. He also contended that no documentary proof regarding the income of the deceased was brought on record and therefore, the income assessed @ Rs. 12,000/- per month was on the higher side. He further stated that even if the income was to be considered on the basis of minimum wages for skilled labourer as prevailing in the year 2019, it should have been taken @ Rs. 10,453/- per month and not @ Rs. 12,000/- per month as assessed by the Tribunal. In view of the aforementioned submissions, Ld. Counsel for the appellant prayed that the appeal was liable to be allowed and the impugned award was thus required to be set-aside.

6. I have heard learned counsel for the appellant and perused the paper-book of the case as well as the records of the Tribunal. I do not find much substance in the arguments advanced by learned counsel for the appellant/insurance company.

7. Primary contention raised by learned counsel for the appellant/Insurance company is that there has been a delay of 32 days in

registration of FIR. In the humble opinion of this Court, in accident compensation cases, the Court is not to take extremely strict view especially when the chargesheet has been filed against the driver of the offending vehicle. Though, the complaint was admittedly filed after 32 days of the accident, yet a perusal of the FIR itself reflects that, the complainant duly justified the delay by stating that he and the deceased were taken to Civil Hospital, Kharar by unknown persons, wherein he was treated there and deceased was referred to PGI, Chandigarh because of his serious injuries. It was also explained that later, the complainant was discharged after getting treatment but the deceased was referred to PGI, Chandigarh. The medical bills of deceased for the period from 27.11.2019 till 18.12.2019 were duly exhibited as Ex-P13 to Ex.-P93. Even, it was clear from the FIR itself that on 26.11.2019, a ruqa was received at Police Station, Gharuan about the accident and on the next day ASI Ranjit Singh along with Constable Nishan Singh visited PGI, Chandigarh for recording statement of the deceased wherein doctor declared him unfit for giving any kind of statement. In such circumstances, when the deceased was an Afghan National, having minimum local support and was admitted in PGI being under treatment, therefore, there was sufficient justification for lodging FIR with some delay. Even the involvement of the offending vehicle was clearly traceable from the FIR itself where the number of motorcycle HP 10A 4265 was specifically given by the complainant. It was admitted fact that the deceased was referred to PGI, Chandigarh for further treatment and the cause of death was polytrauma due to road side accident and its sequelae, which was also proved on record. In this regard even the Hon'ble Apex Court in the case of **Ravi v. Badrinaryan** reported as **(2011) 4 SCC 693** held that there could be variety of reasons in genuine cases for delayed

lodgement of FIR and the same deserve to be condoned. The relevant para of the judgment is culled out as under:-

“21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

8. Coming to the next argument raised by the learned counsel for the appellant/Insurance Company that the pillion rider did not receive any injury whereas the driver of the vehicle (deceased) died due to the alleged accident; itself belies the version of claimants. In this regard, it may be pointed here that, there is no strict rule that every person involved in an accident necessarily sustains injuries. It was the good fortune of the complainant and the grace of God that he remained unharmed. It was even clear from the FIR, that the complainant/pillion rider and the deceased were

immediately taken to Civil hospital, Kharar by some unknown persons where they were both treated and the deceased was later, referred to PGI, Chandigarh. This fact was never rebutted by leading any cogent evidence by the appellant. From the records of the tribunal, it is evident that even the number of offending vehicle finds mentioned in the FIR (Exhibit P8). Further, injuries received by the driver of the offending vehicle were never rebutted by the appellant—Insurance Company, either in its written statement before the learned Tribunal or before during the cross examination of the eye witness (PW1). More than that, the investigating officer of the FIR was produced as witness by the appellant—Insurance Company being RW1 and even admitted the fact that the accused (the driver of the offending vehicle) was identified by the complainant, and he did not move any application against his involvement. In such circumstances, applying the principle of law that the standard of proof in accident, claim matters is one of preponderance of probability rather than beyond reasonable doubt as set down by the Hon'ble Apex Court, in case of **"Anita Sharma And Others Versus The New India Assurance Company Ltd And Another"**, reported as **2021(1) Recent Civil Reports (Civil) Page 200**, the involvement of offending vehicle as well as the negligence of driver, as alleged by the complainant is duly proved. Relevant paragraph No.22 from the aforementioned decision is reproduced hereunder for reference:-

22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable

doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with nonexamination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])"

Even the accident with the offending vehicle was duly proved on record and its driver being rash and negligent was held liable for the same.

9. Lastly, the argument raised by learned counsel for the appellant/Insurance Company was that in the absence of any documentary evidence regarding the income of the deceased, it could not have been assessed more than the minimum wages prevalent at the relevant time which approximately were Rs.10,500/- per month for skilled labourer. However, in the humble opinion of this Court, the minimum wages cannot be taken as an absolute criterion to assess the income even though no documentary evidence regarding income was available. It was held by the Hon'ble Apex Court in "**Zakir Hussein vs Sabir and others**" reported as **2015(2) RCR(Civil) 141** that notification of minimum wages was only a

yardstick for assessing the income of a person but it was not an absolute factor to be taken into consideration, as at times it failed to meet the requirements that were needed to maintain the basic quality of life. Relevant para from this judgment is reproduced hereunder:-

“14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning L 4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns L 128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at L 150/- per day (L 4,500/- per month i.e. L 54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at L 51,000/- for a period of one year and five months. We have to enhance the same to L 76,500/- (L 4,500 X 17 months).”

10. In "**Kubrabibi v. Oriental Insurance Co. Ltd.**", reported as 2023(3) Apex Court Judgments (SC) 23, Hon'ble Apex Court held that in

the absence of definite proof of income, the social status of the deceased was to be kept in perspective where such persons were employed in unorganized sector. Relevant para from this judgment is reproduced hereunder:

“7. In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it.”

11. In the present case, the informant-eyewitness-complainant while deposing as PW-1 stated that the deceased was pursuing MBA from Chandigarh University and used to give tuition classes to the students and was thus, earning Rs. 50,000/- per month. There being no *prima facie* rebuttal to the said deposition, this court is of the definite view that the deceased being working in an organised sector and earning his livelihood as an expert-tutor besides; considering the fact that he was also a student of MBA 1st year, would have got much more opportunities in future to improve his status and income. It was also on record that the deceased was driving scooter on the fateful day when accident occurred, thereby implying that he was managing a vehicle as well. Thus, after examining the

evidence on record, Ld. Tribunal assessed the income of the deceased as Rs. 12,000/- per month. Merely because it was marginally above the minimum wages prevalent at that point of time, cannot be a ground to interfere with the income assessed by the learned Tribunal.

12. In view of the discussion made hereinabove, no ground is made out to interfere in the impugned award dated 31.10.2023 passed by learned Tribunal and thus, the present appeal is dismissed being devoid of any merit. It is made clear that while dealing with the present appeal, the merit about the claim of respondents No.1 & 2 towards enhancement of compensation, if any has not been considered or discussed and the same would be dealt with, in case of any appeal preferred by them in future. It is also clarified that even the upholding of income @ Rs. 12,000/- per month is for the purpose of present appeal only and would not be binding in case any appeal is preferred at the instance of claimants at a later stage.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

12.08.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>