



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO-3788-2018(O&M)
Date of decision: 19.02.2025**

Ameena and others

...Appellant(s)

Vs.

Bharti AXA General Insurance Company Ltd. and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munfaid Khan, Advocate for the appellants.

NIDHI GUPTA, J.

CM-13269-CII-2018

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 326 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant No.1, the same is allowed and delay of 326 days in filing the accompanying appeal is condoned.

CM-13270-CII-2018

Prayer in this application filed under Section 151 CPC is for condonation of delay of 25 days in refiling the accompanying appeal.

Heard.



For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant No.1, the same is allowed and delay of 25 days in refiling the accompanying appeal is condoned.

FAO-3788-2018 (O&M)

The present appeal has been preferred by the claimants seeking enhancement of compensation of Rs.13,35,800/- awarded by the Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') vide Award dated 05.09.2016 partly allowing the claim petition No. 19 dated 05.03.2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The 6 claimants before the learned Tribunal were the widow and 5 children aged 29, 17, 15, 13 and 11 years old respectively, of the deceased Rajjak, who was stated to have been about 53 years old at the time of accident.

2. Brief facts of the case are that the learned Tribunal on the basis of the pleadings and evidence adduced before it, concluded that the deceased Rajjak had died due to the injuries sustained by him in a motor vehicular accident that took place on 09.01.2016 due to the rash and negligent driving of a motorcycle bearing registration No. HR-27E-1360 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1; owned by respondent No.2; and insured by respondent No.3 herein. The learned Tribunal awarded the compensation as above alongwith interest @ 7.5% per annum from the date of filing of the petition till actual realization of the amount. The learned Tribunal further directed



that 30% of the above said compensation will be given to the appellant No.1/widow; and 14% each will be given to appellants No. 2 to 6 i.e. the major and minor children of the deceased Rajjak. All the respondents were held liable to pay the said compensation jointly and severally.

3. Learned counsel for the appellants seeks enhancement of compensation on the ground that nothing has been granted to the minor appellants No. 3 to 6 by way of love and affection. It is also submitted that the deceased was taken and got admitted to Medical College, Nalhar after arranging the vehicle where he died after some time. However, nothing has been awarded to the appellants on account of transportation and medical expenses to the appellants. It is accordingly prayed that the impugned Award be modified; and the present appeal be allowed.

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

5. I have heard learned counsel for the appellants and perused the case file in great detail.

6. I find no merit in the submissions made on behalf of the appellants. Perusal of the record of the case shows that it was the pleaded case of the appellants/claimants that the deceased was a shopkeeper and was earning Rs.20,000/-per month. However, no evidence was led by the appellants in support. Accordingly, learned Tribunal had assessed the monthly income of the deceased as that of an unskilled labourer as Rs.8,000/- per month. Therefore, the annual income of the deceased came to be Rs.96,000/- . Further the age of the deceased was established to be 53 years old at the time of accident on the basis of his Aadhar Card. As such



future prospects ought to have been added at the rate of 10%. However, the learned Tribunal has added future prospects @ 15%. The annual income of the deceased was thus calculated to be Rs.1,10,400/- (Rs.96,000 + 14,400) As there were 6 claimants, deduction of 1/4th was made towards personal expenses (Rs.1,10,400-Rs.27,600 = Rs.82,800/-). Multiplier of 11 was correctly applied (Rs.82,800 X 11 = Rs.9,10,800/-). Under the conventional heads, the learned Tribunal further granted Rs. 1 lac each for loss of estate; loss of consortium; loss of expectation of life of deceased; love and affection; and Rs.25,000/- for funeral expenses, thus totalling Rs.4,25,000/-. Hence, the learned Tribunal granted total compensation of Rs.13,35,800/- (Rs.9,10,800 + Rs.1,00,000 + Rs.1,00,000 + Rs.1,00,000 + Rs.1,00,000 + Rs.25,000), along with interest @ 7.5% per annum from the date of filing the petition till realization.

7. As pointed out above, it is firstly clear that as age of the deceased was 53 years old, future prospects of 10% should have been added and not 15%. Thus, excessive compensation has been granted.

8. Further, a highly excessive amount of Rs.4,25,000/- has been given under the conventional heads, which is in contravention of the recent judgments of the Hon'ble Supreme Court in **"Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others"** Civil Appeal Nos.2410-2412/2023 and **"Mehmooda Bee & Others Vs. National Insurance Co. Ltd."** (@ SLP (C) No.16767 of 2022) and **"Bebi Giri Vs. National Insurance Co. Ltd."** Civil Appeal No.6551 of 2022, wherein it has been held that maximum sum of Rs.77,000/- can be granted under the conventional heads.



9. It is also to be noted that appellant No.2 is a major son of the deceased having 29 years of age. Nothing has been shown that he was financially dependent upon the deceased.
10. It is therefore, clear that already, compensation has been paid in excess than the amount admissible to the appellants as per law.
11. Learned counsel for the appellants is unable to controvert or dispute the above said factual and legal position as noted above.
12. As such, the present appeal is **dismissed**.
13. Pending application(s) if any also stand(s) disposed of.

19.02.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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