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**(2005) 08 DEL CK 0016**

**In the Delhi High Court**

**Case No : FAO. 361 of 2003 and CM. 771 of 2003**

Smt. Kalawati and Others

APPELLANT

Vs

Sh. Sewa Singh and Another

RESPONDENT

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**Date of Decision : 29-08-2005**

**Acts Referred:**

**Citation : (2005) 08 DEL CK 0016**

**Hon'ble Judges : Pradeep Nandrajog, J**

**Bench : Single Bench**

**Advocate : Pratima Nain Chauhan, for the Appellant; Pankaj Seth and Mohd. Ragib, for the Respondent**

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## **Judgement**

Pradeep Nandrajog, J.

CM. 771/2003

1. Appellants seek condensation of delay in filing the appeal. Delay is of 20 days. Appellants are the wife, married daughters and the son of deceased Om Prakash. They come from a rural background. Appellants pray that technicalities of law should not stand in their way. Accordingly, appellants pray that 20 days delay in filing the appeal be condoned.

2. Learned counsel for the insurance company opposes condensation of delay stating that no worthwhile cause has been stated in the application.

3. It is stated in the application that after the award was pronounced on 1.2.2003, appellants handed over documents to the present counsel for filing appeal in the last week of April 2003. Counsel applied for certified copy and took time to prepare the appeal.

4. Application seeking condensation of delay is drafted very clumsily and does not bring out, even broadly, time spent by the petitioners after the award was pronounced till the last week of April 2003. Application does not bring out as to what was being done by the appellants in the first 3 weeks of May.

5. However, it cannot be lost sight of, that the appellants come from a rural background.

6. Decisions of the Supreme Court reported as Municipal Corporation, Indore Vs. Shri K.N. Palshikar, Indore, , The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, , O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, and N. Balakrishnan Vs. M. Krishnamurthy, require the expression "sufficient cause" to be considered with pragmatism in justice oriented approach rather than a technical approach requiring Explanation of every days delay.

7. I may note that in every case of delay there has to be some lapse on the part of the litigant concerned. Lapse by itself is not enough to turn down the plea of condensation.

8. If the Explanation smacks of mala fides, the court would lean against condoning delay. Similarly if culpable negligence is found, it would proximate to mala fides and on said ground also, delay would not be condoned.

9. In the instant case I do not find culpable negligence. Explanation offered does not smack of mala fides. Application is accordingly allowed. Delay in filing the appeal is condoned.

FAO. 361/2003

1. Appellants are the widow, three married daughters and the major son of late Om Prakash.

2. While proceeding on a two wheeler scooter driven by one Kanwal Singh, Om Prakash met with a fatal accident on 11.11.1998. He died. Offending vehicle a truck bearing No. PB-13F-4299 driven by respondent No. 1 and owned by respondent No. 2. The truck was insured with respondent No. 3.

3. Holding the truck driver liable for the accident, learned MACT proceeded to determine the compensation to the claimants.

4. Age of the deceased was 45 years. Appellants claimed that he was earning Rs.5000/- p.m. from agricultural activity and dairy farming. No proof of agricultural holding being furnished, learned Tribunal opined that residing in a village, it could be presumed that the deceased would be engaged in some kind of rural based activity i.e. dairy farming. From this activity he would be earning some money. It was presumed that deceased had 2 to 3 cattle. Applying the wages of an unskilled worker, Tribunal that the gross monthly earnings of the deceased would be Rs.2000/-. Since the deceased was 45 years, Tribunal gave benefit of future increase in wages. Future increase was arrived at Rs.3000/- p.m. Average monthly income was accordingly fixed at Rs.2000/- + Rs.3000/- divided by 2 = Rs.2500/-. Apportioning one-third towards personal expenses, dependency has been worked out at Rs.1666/- p.m. Multiplier adopted has been 10. Accordingly, compensation assessed is Rs.2 lacs. Rs.10,000/- has been awarded towards loss of consortium to appellant No. 1. Rs.10,000/- have been

awarded towards expenses for funeral and last rites.

5. At the hearing, learned counsel for the appellant restricted her arguments to the multiplier of 10 adopted. Counsel urged that the schedule-II to the Motor Vehicles Act, 1988 which was introduced in the Statute book in the year 1994 stipulated that where the age of the victim was above 45 years but not exceeding 50 years multiplier to be adopted has to be 13.

6. Opposing the grant of enhancement of compensation, learned counsel for the insurance company relied upon U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, Counsel urged that a perusal of the said decision shows that while referring to the multiplier as provided in schedule-II to the M.V. Act, their Lordships of the Supreme Court did not take into account the future increase in wages. Counsel urged that in the instant case, benefit of future increase in wages has been granted by the Tribunal and, herefore, multiplier adopted by the Tribunal should not be disturbed by this court.

7. Perusal of the decision of the Supreme Court in Trilok Chander's case (supra) shows that their Lordships, by way of illustration in para 18 explained how the multiplier as set out in schedule-II, if applied literally would result in erroneous conclusions, for the reason the schedule has many mistakes.

8. Further, the decision does not negate anticipated increase in wages to be considered while applying the multiplier On the contrary decision notes the earlier decision of the Supreme Court reported as General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

9. Accordingly, the multiplier which needs to be adopted in the present case is 13. However, I refrain from enhancing the compensation for the reason, the Tribunal has acted mechanically while determining the dependency loss. Tribunal ignored that appellants 2, 4 and 5 were the married daughters and hence were not dependent upon the deceased. Appellant No. 3 was aged 24 years. He is the major son. Under the circumstances it could reasonably expected that deceased would be spending more than one-thiron his personal expenses. Further, cattle owned by the family would continue to give the requisite benefits to appellant No. 1.

10. Though for different reason, I uphold the amount awarded.

11. Interest has been restricted to one year and six months. Reasons have not been given. I may not that future interest has been awarded.

12. Perusal of the file shows that claim petition was filed on 21.1.99 and was decided on 1.2.2003. I do not find any justification for restricting interest to 1 year and 6 months.

13. Appeal stands disposed of modifying the award and awarding interest @ 9% P.A. to the appellants from date of filing of the petition till date of realization of the sum awarded.

14. No costs.