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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 25, 2010
Date of Order: July, 02 2010

+ MAC Appeal 336/2010 & CM No.9868/2010

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Hussain
Through: K.K. Dubey, Advocate

02.07.2010
...Appellant

Versus

Surender Kumar & Ors.
Through: Mr. Pankaj Seth, Advocate for R-3

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. This order shall disposed of an application under Section 5 of Limitation Act seeking condonation of delay of 120 days in filing the appeal. The grounds as stated in the application are that the appellant was very depressed due to loss of his livelihood after the accident and he was financially shattered and, therefore, could not file appeal against award within prescribed time. The present appeal was filed after 120 days of delay.

2. The grounds narrated by the appellant in the application are quite vague and evasive. The accident of the appellant took place on 4th March, 2006. The appellant had injured his right hand and in the accident and filed a claim petition before the Tribunal in time. If he could file the claim petition soon after the accident despite sustaining injuries, it is not understood how he became depressed after passing of award when the Tribunal

awarded a sum of Rs.2,73,000/- in his favour. The reason given for not filing the appeal within time is obviously baseless. I find no force in the application for condonation of delay. The application is hereby dismissed.

3. Even otherwise, I have gone through the award passed by learned Tribunal. The appellant suffered 38% locomotor impairment in respect to his right upper limb. The Tribunal considered the incapacity to earn as 50% and awarded compensation without deducting any amount towards misc expenses. Since the appellant failed to place on record proof regarding his employment, the Tribunal took into consideration the minimum wages as applicable on the date of accident at Rs.1090/- per month and applied a multiplier of 15, did not deduct any amount towards misc expenses etc and awarded a compensation for loss of earning capacity to the tune of Rs.2,73,200/- which under no circumstances can be said to be inadequate. If the Tribunal has followed the judgment of Supreme Court in *Sunil Kumar Vs. Ram Singh Gaud*, VI(2007) ACC 716 SC, the Tribunal should have deducted 1/3rd of income towards misc expenses out of the income of the appellant and then calculated loss of income. The learned Tribunal also awarded a sum of Rs.15,000/- towards pain and suffering, a sum of Rs.50,000/- towards future prospects and Rs.7,000/- towards actual medical expenses and Rs.5,000/- towards conveyance and special diet on the basis of evidence produced before it. I find that the award passed by learned Tribunal was just and fair and need no interference.

4. The appeal is hereby dismissed having no force and being time-barred.

July 02, 2010
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SHIV NARAYAN DHINGRA J.