

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.128 of 2014 (O&M)
Date of decision : 03.05.2016**

Yashpal

.....Appellant

Versus

Ramesh Dhobi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. D.S. Nain, Advocate for appellant.

Ms. Vandana Malhotra, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-145-CII-2014

There is delay of 98 days in re-filing the present appeal. The appellant has filed an application under Section 151 of the Code of Civil Procedure for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay in re-filing the appeal is hereby condoned.

CM-146-CII-2014

There is delay of 347 days in filing the present appeal. The

appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Learned counsel for the applicant-appellant submitted that he do not claim the interest on the enhanced amount of compensation, if any, for the period of delay caused in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 347 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the appellant-claimant against the award dated 19.04.2012, passed by the learned Motor Accidents Claims Tribunal, Kaithal (hereinafter called the 'Tribunal') vide which the appellant-claimant has been awarded compensation to the tune of Rs.1,74,000/- on account of the injuries suffered by him in the motor vehicular accident which took place on 21.06.2009.

2. The present appeal has been preferred by the appellant-claimant for enhancement of the amount of compensation.

3. Learned counsel for the appellant-claimant contended that the claimants has suffered 15% disability as a result of head injury suffered in the present accident, but the learned Tribunal has awarded only Rs.30,000/- in lump sum as compensation on account of the

permanent disability. He further contended that no compensation towards loss of income during the treatment period and attendant charges has been awarded. Thus, he contended that learned Tribunal has not awarded the just compensation.

4. On the other hand, Ms. Vandana Malhotra, Advocate, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has awarded Rs.1,74,000/- as compensation to the claimant taking into consideration all the heads, so the compensation awarded by the learned Tribunal is just and appropriate.

5. I have duly considered the aforesaid contentions.

6. As per the disability certificate Ex.P1, the appellant-claimant has suffered 15% disability due to old case of head injury with epilepsy. The learned Tribunal has awarded Rs.30,000/- in lump sum as compensation for this disability suffered by the appellant-claimant. The learned Tribunal has neither determined the income of the appellant-claimant, nor applied the multiplier, so the method adopted by the learned Tribunal to compute the compensation on account of permanent disability is erroneous.

7. Learned counsel for the appellant-claimant has pleaded that the claimant-injured is an agriculturist. But the claimant has not placed on file any documentary evidence to show that he was an agriculturist having agriculture land in his possession, but there is no denial to the fact that he was hale and hearty and even by working as a

labourer, he could have easily earned Rs.4000/- per month i.e. Rs.48,000/- per annum.

8. The claimant has suffered 15% disability as per the disability certificate Ex.P1. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, has laid down that future loss of earning cannot be assessed on the basis of percentage of the permanent disability but that has to be assessed on the basis of percentage of functional disability i.e. effect or impact of such permanent disability on his earning capacity. In that case the claimant has suffered 45% permanent disability but the Hon'ble Apex Court has considered the permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In my opinion due to the permanent disability, the appellant-claimant must have suffered the loss of the future income to the extent of 10%. So, the monthly loss comes to Rs.400/- and the annual loss comes to Rs.4800/-.

9. Learned counsel for the appellant has pleaded that the claimant was about 50 years of age at the time of accident and this fact is not disputed at bar by the learned counsel for the respondent-Insurance Company. So, the multiplier of 13 shall be applicable. The compensation on account of functional disability suffered by the claimant comes to Rs.62,400/- (4800 x 13) instead of Rs.30,000/- as awarded by the learned Tribunal. The learned Tribunal has not awarded any compensation to the claimant on account of loss of income. In view of the injuries suffered by

him, he may not have been able to work for at least for two months. So, the claimant shall be entitled to a sum of Rs.8000/- as compensation on account of loss of income. The claimant shall also be entitled to a sum of Rs.4000/- as compensation on account of attendant charges.

10. With the aforesaid increase, the amount of compensation payable to the appellant-claimant will be as under:-

Sr. No.	Compensation heads	Amount in rupees
1.	Permanent disability	62,400 (as enhanced by this Court)
2.	Pain and suffering	15,000 (as awarded by the Tribunal)
3.	Transportation charges & healthy diet	15,000 (as awarded by the Tribunal)
4.	Medical expensed	1,14,000 (as awarded by the Tribunal)
4.	Loss of income	8000 (as enhanced by this Court)
6.	Attendant charges	4000 (as enhanced by this Court)
Total		2,18,400

11. In this way the amount of compensation payable to the appellant/claimant comes to Rs.2,18,400/- instead of Rs.1,74,000/- as awarded by the learned Tribunal.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.2,18,400/- from Rs.1,74,000/- as awarded by the learned Tribunal. The appellant-claimant shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation, except for the period of 347

days *i.e.* the delay caused by the appellant in filing the present appeal.

The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

03.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**