IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5954-2013 (O&M)
Date of decision: 9.2.2016

Dharmender

...Appellant

Versus

Rajinder and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Gopal sharma, Advocate for the appellant

Mr.VK Garg, Advocate
for respondent No.3- Insurance Company

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SNEH PRASHAR, J.

CM-24477-CII-2013

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 123 days in filing the appeal.

Despite opportunities availed, no reply has been filed on behalf of respondent No.3- Insurance Company

For the reasons enumerated in the application, the same is allowed. Delay of 123 days in filing the appeal is hereby condoned subject to all just exceptions.

FAO-5954-2013

By filing the present appeal, the appellant is seeking enhancement of the compensation awarded to him by learned Motor Accident Claims Tribunal, Panchkula vide award dated 2.4.2013 on account of the injuries sustained by him in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard and record perused.

It is submitted on behalf of the appellant that on account of the injuries suffered by him, he sustained disability to the extent of 46%. Having become disabled he is unable to do his routine work. He remained admitted in PGI for three days and thereafter remained hospitalised for seven days in Alchemist Hospital at Panchkula. Submitting that the compensation awarded to the appellant is inadequate, learned counsel prayed for enhancement of the same.

On the other hand, learned counsel representing respondent No.3- Insurance Company submitted that the disability suffered by the appellant has neither caused loss in income nor loss in earning capacity and therefore the appeal deserves to be dismissed.

Perusal of the record reflects that the petitioner suffered injuries in a road side accident on 18.8.2011, caused by respondent No.1- driver of the offending Canter. He remained hospitalised from 18.8.2011 to 20.8.2011 in PGI, Chandigarh and thereafter from 20.8.2011 to 26.8.2011 in Alchemist Hospital, Panchkula. PW6 Dr.Umesh Modi, being member of the Board of doctors, who examined the appellant proved the disability certificate Ex.PW6/A, according to which, the appellant suffered 46% disability on account of mal united fracture and stiffness in the shoulder and profound mixed hearing loss. However, learned Tribunal by presuming his functional disability only to the extent of 10% and applying the multiplier of 15, assessed his loss of income as Rs.83,595/-.

The Hon'ble Apex Court in **Raj Kumar vs. Ajay Kumar and another 2011(2) RCR (Civil) 101** has laid down the method of ascertaining the effect of permanent disability on the actual earning capacity of the victim as under:-

> "*Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant*

> *is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand.*

In the case in hand fracture of bilateral scapula suffered by the appellant is left malunited. Fracture in left clavicle has left stiffness in shoulder and there is also profound mixed hearing loss. The appellant used to sell fish and meat on Rehri. Being a manual worker his earning capacity is bound to be effected by the disability suffered by him. The disability would cause hindrance in the smooth functioning of his daily work. He was a young man aged 37 years. Learned Tribunal assessed his monthly income as Rs.4644/- per month, which calls for no intervention. Considering the nature of disability the loss in earning capacity works out to 46%. Accordingly, Rs.3,84,523/- (46% of 4644 x

12 x 15) is allowed as compensation on account of disability resulting in loss of earning capacity.

Amount spent on treatment and purchase of medicines i.e. Rs.67,126/- has already been allowed to the appellant. Apart from it, learned Tribunal has awarded a sum of Rs.10,000/- on account of pain and suffering and Rs.5,000/- on account of miscellaneous expenses including transportation etc., which keeping in view the period of hospitalisation, nature of injuries suffered by the appellant, appears to be on the lower side. Therefore, the amount awarded under the heads of pain and suffering is enhanced to Rs.30,000/- and miscellaneous expenses including transportation charges is to Rs. 10,000/-.

Accordingly, the enhanced amount of Rs.3,25,928/- shall be paid to the appellant within two months from the date of the receipt of the certified copy of this judgment, failing which, the same shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

9.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**