

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

FAO-5348-2014 (O&M)

Date of decision: 8.2.2016

Pawan Kumar

...Appellant

Versus

Ajay Kumar and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JP Sharma, Advocate for the claimant-appellant

Respondent No.1 exparte vide order dated 8.9.2015

Mr.VK Garg, Advocate for respondent No.2

SNEH PRASHAR, J.

The present appeal had been filed by claimant-appellant Pawan Kumar seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide award dated 5.3.2014 on account of the injuries suffered by him in a motor vehicular accident that occurred on 1.11.2012.

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

It is submitted on behalf of the appellant that at the time of accident, he was a young boy aged 22 years and on account of

the injuries, he suffered 20% permanent disability however, the learned Tribunal erroneously considered the same only as 10%. The letter Ex.PW5/A dated 27.11.2012 proved that the appellant was provisionally selected as a Constable (General Duty) in Sashastra Seema Bal by Ministry of Home Affairs, Government of India and was directed to report at RTC, SSB, Alwar (Rajasthan) on or before 26.12.2012. It was also mentioned that in case he fails to report within 45 days from the date of issue of offer of appointment, the offer will be treated as cancelled. The appellant on account of disability suffered due the injuries sustained in the accident, could not report before the concerned authority in time and therefore, his appointment was cancelled. The cancellation letter dated 6.7.2013 (Annexure A/1) was received in July, 2013 and could not be tendered in evidence during trial and the same be now taken on record by way of additional evidence.

Learned counsel also contends that the appellant remained admitted in Kailash Hospital from 1.11.2012 to 17.11.2012 and he was operated upon. He remained confined to bed for a long time, but a meager compensation of Rs.3,95,891/- was allowed to him by the Tribunal. He also prayed for enhancing the rate of interest i.e. 6% per annum allowed by the Tribunal.

The letter Annexure A-1 which the appellant wants to

produce by way of additional evidence is of no help to him. It does not mention that appointment was being cancelled due to the disability sustained by the appellant. It was stated by the appellant in his deposition made during the trial that he could not join duty due to the accident but he produced no evidence to prove that he was unable to report because of the injuries sustained in the accident or that he applied for extension of time to join but it was declined to him.

The disability suffered by the appellant was 20%. Taking the functional disability effecting the future earning capacity as 10% and considering the law laid down by the Hon'ble Supreme Court in **Raj Kumar vs. Ajay Kumar (2011)**, SCC 343, learned Tribunal awarded a sum of Rs.1,21,392/- to the appellant, which calls for no intervention.

The appellant produced medical bills Ex.P3 to Ex.P147 amounting to Rs.1,39,499/-, which have been allowed by learned Tribunal. Apart from it, a sum of Rs.60,000/- was awarded on account of loss of amenities, Rs.20,000/- was awarded under the head of transportation expenses, which are just and adequate. But keeping in view the injuries suffered by the appellant, the hospitalisation period and the period for which he remained confined to bed, the amount awarded under the head of pain and

suffering and loss of income appears to be on the lower side.

Therefore, the same is enhanced as under:-

1. Pain and suffering Rs.20,000/-
2. Loss of income (5620 x 3 months)= Rs.16860/-

Further in view of the law laid down in *Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and others, 2006 (1) R.C.R.(Criminal) 598 : 2005(4) R.C.R.(Civil) 628 : 2005(2) PLR 650.*, the rate of interest allowed by learned Tribunal is enhanced from 6% per annum to 7.5% per annum on the compensation amount from the date of filing the claim petition till realisation.

§§§ Accordingly, the compensation awarded by the tribunal and the enhanced compensation of Rs.36860/- shall be paid to the claimant-appellant alongwith interest @ 7.5% per annum from the date of the petition.

In the above premise, CM-14941-CII-2014 filed by the appellant for leading additional evidence stands dismissed, whereas the appeal is partly allowed and the impugned award is modified to the above extent.

8.2.2016
gsv

(SNEH PRASHAR)
JUDGE