

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

**FAO No.5699 of 2015 (O&M)
Decided on: 05.12.2016**

Rajinder Singh

....Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ashwani Arora, Advocate
for the appellant.

Mr. Kapil Bansal, DAG, Haryana
for respondents No.1 and 2.

Mr. S.S. Bedi, Advocate
for respondent No.3.

Mr. Satpal Dhamija, Advocate
for respondent No.4.

REKHA MITTAL, J.

CM No.17929-CII of 2015

Prayer in this application is for condoning delay of 37 days
in filing the appeal.

Heard.

In view of averments made in the application supported by
an affidavit of Rajinder Singh, the applicant-appellant, the application
is allowed and delay of 37 days in filing the appeal stands condoned.

MAIN CASE

The injured – victim is in appeal seeking enhancement of
compensation awarded by the Motor Accidents Claims Tribunal,
Chandigarh (in short 'the Tribunal') in regard to injuries sustained by
him in a motor vehicular accident that took place on 13.08.2013.

The Tribunal awarded an amount of Rs.97,500/- under the following heads:-

Sr. No.	Category	Amount
1.	On account of medical expenses	Rs.36,500/-
2.	On account of 13% permanent physical disability	Rs.26,000/-
3.	On account of special diet, transportation, pain and sufferings, attendants, mental work agony, etc.	Rs.35,000/- (on guess)
TOTAL		Rs.97,500/-

Counsel for the appellant has submitted that as per medical evidence adduced by the claimant, the victim suffered fracture both bones left leg and was shifted to PGI, Chandigarh. Rajinder Singh – claimant appeared in the witness-box and deposed by way of affidavit that due to accident, he remained confined to bed for about 8 months and could not earn anything during that time. It is argued that the Tribunal has not awarded any compensation for loss of income during the period of treatment and till recovery.

Another submission made by counsel is that as per testimony of Dr. Kapish Gupta, one of the members of the medical board constituted to assess disability of the victim, Rajinder Singh suffered permanent physical disability of left lower limb to the extent of 13% which is functional in nature, therefore, the claimant is entitled to compensation for loss of income qua disability, in addition to Rs.26,000/- for disability awarded by the Tribunal. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India “*B. Kothandapani vs Tamil Nadu State Transport Corporation Limited*”, 2011 ACJ (SC) 1971. Further reference has been made to judgments of Hon'ble the Supreme Court “*Jakir Hussein vs Sabir and others*”, 2015

ACJ (SC) 721, “*Syed Sadiq, etc. vs Divisional Manager, United India Insurance Company*”, 2014 ACJ (SC) 627.

Counsel for the respondents have supported the award with the submission that there is no justification for enhancement of compensation.

I have heard counsel for the parties perused the paperbook and the records.

The claimant did not examine the treating doctor, however, documents Ex.P2 to P4 with regard to his treatment in PGI, Chandigarh have been marked as exhibits. In para 4 of the affidavit filed by the claimant, it is deposed that he remained confined to bed for about 8 months and could not earn anything. Till today, he is not able to work and is dependent on others for his livelihood. In his cross-examination except the suggestion that he did not remain on bed for a period of 8 months, there is no challenge to his testimony with regard to nature of injuries sustained, nature of treatment and debridement, hybrid fixator, wire and plastic being applied on his left leg on 14.08.2013. In Ex.P2, the discharge and follow-up card of PGI, there is mention that fixator was removed on 03.12.2013. In view of nature of injuries sustained by the victim and the medical documents pertaining to PGI, Chandigarh, the claimant is held entitled to loss of income @ Rs.5,000/- per month for a period of 06 months when he was not able to work due to fracture of both bones left leg and a fixator being applied that was removed in December, 2013.

Much stress has been laid by counsel for the appellant with regard to grant of compensation qua loss of future income owing to

disability. Dr. Kapish Gupta, Medical Officer, Department of Orthopedics was examined to prove the disability certificate – Ex.P37.

A relevant extract from his testimony reads as follows:-

“Patient had grafting on left leg. Knee movements in full range, ankle dorsiflexion absent. No limb length discrepancy. Power of muscles around knee and ankle grade-IV i.e. mild weakness in muscles. Permanent physical disability with respect to left lower limb is 13%, which is also functional in nature. It has further been deposed that he could find difficulty in squatting and sitting cross legs, running. He will face problems in doing agricultural work.”

Perusal of the disability certificate would reveal that no such opinion was expressed by the medical board that disability because of power of muscles around knee and ankle being grade-IV would result in functional disability. The mere fact that the doctor has described disability to be functional, in the circumstances, is not sufficient to conclude that the victim suffered functional disability. It appears that the medical board assessed disability to the left lower limb to the extent of 13% as power of muscles around knee and ankle was found to be grade-IV in place of grade-V. This apart, no evidence has been adduced by the claimant that he either owns agricultural land or was otherwise involved in agricultural operations. He claims himself to be owner of 8-9 bighas of land but failed to produce any document in respect thereof. The Tribunal has awarded an amount of Rs.26,000/- in regard to disability to the extent of 13% suffered by the claimant.

To be fair to the claimant, counsel has relied upon judgment of Hon'ble the Supreme Court in ***B. Kothandapani's case***

(supra) wherein the Tribunal awarded an amount of Rs.1,00,000/- towards permanent disability in addition to the amount awarded under the head 'loss of earning capacity' but the High Court reduced compensation to the extent of Rs.1,00,000/- for permanent disability. Hon'ble the Supreme Court restored the award passed by the Tribunal by allowing an amount of Rs.1,00,000/- towards permanent disability as well. In that case, the claimant sustained injury on the centre finger of right hand, knee joint of right leg had been dislocated, injury on the right cheek and eyes, he could not see with his left eye, his right foot had been injured and right ankle joint dislocated. In para 6, the Court has noticed the various hospitals from where the injured – victim got treatment. It has further been noticed that the claimant was working as a Foreman in M/s. Armstrong Hydraulics Limited and after the accident, he is unable to do any work as he cannot bend the fingers of his right hand and use his left hand for eating and there is pain in his right leg and he cannot travel in a two-wheeler or in a transport bus. In the light of facts and circumstances of the present case that the claimant has failed to adduce any clear evidence with regard to his avocation before the accident much less proving loss of earning capacity due to disability to the extent of 13%, compensation awarded by the Tribunal to the extent of Rs.26,000/- due to disability does not warrant addition by allowing separate compensation for loss of earning capacity. However, as the injured – victim has suffered disability to the extent of 13% to his left lower limb, the claimant is awarded an amount of **Rs.10,000/-** for loss of amenities of life. In this manner, the claimant shall be entitled to additional amount of Rs.40,000/- payable with interest @ 7.5% per

annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

05.12.2016

yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No