203-A

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

**FAO No.3690 of 2012 (O&M)
Date of Decision : 08.12.2017**

SURINDER DAS

....APPELLANT

VERSUS

AMIT ALIAS RAHUL AND OTHERS

....RESPONDENTS

CORAM : <u>HON'BLE MR. JUSTICE B.S. WALIA</u>

Present: Mr. Parminder Singh, Advocate for the appellant.

Mr. Mukesh Verma, Advocate for
Mr. Raj Kumar Gupta, Advocate for respondent Nos.1 & 2.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent No.3.

<u>B.S. WALIA, J. (ORAL)</u>

<u>CM-15770-CII-2012</u>

Application is for condonation of delay of 85 days in re-filing of the appeal. Heard learned counsel for the parties. For the reasons as are mentioned in the application, the same is allowed, subject to all just exceptions.

<u>CM-15771-CII-2012</u>

Application is for condonation of delay of 19 days in late filing of the appeal. Heard learned counsel for the parties. For the reasons as are mentioned in the application, the same is allowed, subject to all just exceptions.

FAO No.3690 of 2012

[1] Prayer in the appeal is for enhancement of the compensation awarded on the ground that despite it having been categorically held that as per salary slip (Ex.P-42), the net monthly income of the claimant- appellant was Rs.12,925/-, still the learned Tribunal for reasons best known to it had taken the monthly income of the claimant-appellant at Rs.12,000/-.

[2] Secondly, the permanent disability assessed at the relevant point of time was 59% but as per fresh medical assessment carried out by the Medical Board, PGIMER, Chandigarh on 06.12.2016, the same has increased to 64%. Thirdly, Rs.50,000/- awarded on account of pain and suffering was not adequate, besides no amount had been awarded by way of compensation for special diet despite the fact that the appellant-claimant remained hospitalized for a period of 45 days. Lastly no compensation had been awarded on account of transportation charges despite the fact that the claimant-appellant had got injured in Karnal and was shifted to Delhi and thereafter to Madhuban.

[3] Learned counsel states that in the circumstances, the compensation payable has to be enhanced taking into account relevant aspects of the matter in the light of submissions made above.

[4] Learned counsel for the respondents has not been able to give any explanation whatsoever as to why the income of the appellant-claimant was taken at Rs.12,000/- despite the fact that as per salary slip Ex.P-42, net monthly income of the claimant was Rs.12,925/-.

[5] Learned counsel for the respondent-Insurance Company has fairly conceded increase in permanent disability suffered by the appellant-

claimant from 59% to 64%. As regards, the claim for pain and suffering, special diet, attendant charges as well as transportation charges, learned counsel for the respondent-Insurance Company has not been able to oppose the plea of the learned counsel for the appellant-claimant for grant of reasonable compensation.

[6] I have considered the submissions of learned counsel for the parties and am of the view that since the appellant-claimant was working as an Accountant and was drawing net monthly income of Rs.12,925/- as evident from Ex.P-42, the monthly income ought to have been taken as Rs.12,925/- only and not Rs.12,000/-. Multiplier of 14 has been correctly applied in the light of the decision of the Hon'ble Supreme Court in '***Sarla Verma*** *versus* ***Delhi Transport Corporation***,' *2009 (3) RCR (Civil) 77.* However, since 59% permanent disability suffered by the appellant-claimant at the time of accident on 16.12.2008 has increased to 64% as per the fresh medical examination conducted by the Medical Board of PGIMER, Chandigarh on 06.12.2016 and since as per the report of the Medical Board on Neuropsychological assessment of the appellant-claimant, it was found that there was marked impairment in areas of new learning, attention, concentration, memory, retention, recognition and abstract thinking whereas practical performance skills were relatively less impaired but he was of less than average IQ and in view thereof, the appellant-claimant would not be able to perform complex tasks, therefore, in the circumstances, I am of the view that the compensation payable on account of permanent disability has to be increased. Accordingly, the compensation payable on account of permanent disability would be

worked out as under:-

Annual dependency had earlier worked out as under:

(12000 x 12 x 14)/100 x 59 = 11,89,440 ;

and in view of increase of income to Rs. 12925/- per month and permanent disability to 64%, amount payable as compensation for permanent disability works out as under:-

(12925 x 12 x 14)/100 x 64 = Rs.13,89,696/-.

[7] Accordingly, as against the assessed amount of Rs.11,89,440/- on account of permanent disability of 59%, the appellant-claimant would now be entitled to Rs.13,89,696/- on account of 64% permanent disability on account of head injuries suffered by him as a result of which he is not able to work as an Accountant.

[8] Since the permanent disability has increased from 59% to 64%. Rs.50,000/- awarded on account of pain and suffering is enhanced to Rs.70,000/-. No amount was awarded on account of special diet despite the fact that the claimant-appellant remained admitted in hospital for 45 days. Accordingly, a sum of Rs.15,000/- is awarded towards expenses incurred on special diet. No amount was awarded on account of attendant charges despite the fact that the appellant-claimant received injuries in Karnal, was shifted to Delhi and thereafter to Madhuban, where he remained hospitalized at two different places and obviously required an attendant in view of the nature of the injuries. Taking into account, that the aforementioned period pertains to the year 2008, a sum of Rs.15,000/- is awarded on account of attendant charges, besides a sum of Rs.10,000/- on account of transportation charges while amount of Rs.3,55,000/- on

account of treatment expenses will remain unchanged.

[9] In view of the position as noted above, compensation payable is enhanced to Rs.18,84,696/- as per details given hereunder:-

Sr. No.	**Amount assessed by the Tribunal**	**Amount assessed by this Court**	**Final assessment (in Rs.)**
i)	Salary – Rs.12000/-	Rs.12,925/-	Rs.12,925/-
ii)	Dependency works out to Rs.12,000 x 12 x 14 / 100 x 59 = Rs.11,89,440/-	Dependency works out to Rs.12,925 x 12 x 14 / 100 x 59 = Rs.21,71,400 / 100 x 64 = 13,89,696/-	Rs.13,89,696/- on account of 64% permanent disability.
iii)	Pain & Suffering =Rs.50,000/-	Rs.70,000/-	Rs.70,000/-
iv)	Special Diet = Nil	Rs.15,000/-	Rs.15,000/-
v)	Attendant Charges=Nil	Rs.15,000/-	Rs.15,000/-
vi)	Transportation Charges=Nil	Rs.10,000/-	Rs.10,000/-
vii)	Treatment expenses=Rs.3,55,000/-	No change	Rs.3,55,000/-
Total	**Rs.15,94,440/-**	**Rs.18,84,696/-**	**Rs.18,84,696/-**

[10] Accordingly, compensation payable to the appellant is enhanced from Rs.15,94,440/- alongwith interest @ 6% per annum to Rs.18,84,696/- alongwith interest @ 6% per annum w.e.f. date of claim petition till the date of payment, less amount if any already paid.

[11] Appeal allowed with the aforesaid modification.

(B.S. WALIA)
JUDGE

December 08, 2017
rajneesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No