

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

FAO No.5881 of 2013 (O&M)

Date of decision: 20.09.2017

Soni Dass

... Applicant-Appellant

Versus

Dasondhi Khan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Viney Saini, Advocate
for the applicant-appellant.

Mr. R.N. Singhal, Advocate
for respondent No.3.

REKHA MITTAL, J. (Oral)

CM No.24326-CII-2013

Heard.

For the reasons stated in the application supported by affidavit of the applicant, same is allowed. Delay of 39 days in filing the appeal is hereby condoned.

Main Case

The injured victim is in appeal seeking enhancement of compensation in regard to injuries sustained by him in a motor vehicular accident that took place on 27.02.2010.

The Tribunal awarded an amount of Rs.17,000/- under the following heads :-

Expenses on medical treatment - Rs.10,000/-

Pain and sufferings - Rs.5,000/-

Special diet, transportation and attendant etc. - Rs.2,000/-

Counsel for the appellant has submitted that the Tribunal has not awarded any compensation with regard to disability/loss of future income on account of 10% permanent disability due to united fracture left thigh with pain during walking with shortening with restriction of terminal range of motion. Another submission made by counsel is that compensation awarded by the Tribunal on account of pain and sufferings, special diet, transportation and attendant etc. needs to be enhanced. According to counsel, the claimant was working as tractor driver with Sarwan Kumar at salary of Rs.10,000/- per month. But due to disability to his left leg, he would no more be able to drive the tractor and loss of future income is liable to be assessed accordingly.

Counsel representing the insurance company, on the contrary, would urge that the claimant has failed to adduce satisfactory much less cogent evidence on record to prove his avocation before the occurrence much less income at Rs.10,000/- per month. The claimant has not examined the doctor to prove disability certificate Ex.PX.

I have heard counsel for the parties, perused the paper book and records.

The claimant produced on record disability certificate Ex.PX whereby disability to the extent of 10% on account of left thigh with pain

during walking with shortening with restriction of terminal range of motion has been assessed. However, the claimant has failed to adduce satisfactory evidence with regard to his avocation prior to the occurrence or income from the said avocation as he has not examined Sarwan Kumar to prove that he was working as tractor driver of Sarwan Kumar at salary of Rs.10,000/- per month. Statement of the claimant by way of affidavit PW3/A is silent about the registration number of said tractor on which he was working as a driver. However, there is no dispute that the claimant was 24 years old at the time of occurrence. Taking into consideration age of claimant and disability to the extent of 10%, he is awarded an amount of Rs.20,000/- for loss of income qua disability.

The injured victim remained hospitalised for a period of 13 days and he was operated for fracture of left leg and iron rod was inserted. In view of nature of the injury sustained which has left disability to the extent of 10%, claimant is entitled to loss of income during the period of treatment and recovery for a period of 3 months. The salary of injured victim is assessed at Rs.4500/- per month and he is awarded an amount of Rs.13,500/- for loss of income for the aforesaid period.

The Tribunal has awarded an amount of Rs.5,000/- on account of pain and sufferings and the same is affirmed. However, the claimant shall be entitled to a sum of Rs.10,000/- on account of special diet, transportation and services of attendant. In this manner, the total compensation comes to Rs.58,500/-. The additional amount of Rs.41,500/-

is payable with interest @7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

20.09.2017

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No