

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

**FAO No.6083 of 2014 (O&M).
Date of Decision: 31.01.2017.**

Amit Kumar

....Appellant.

VERSUS

Satya Narain and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amit Singla, Advocate for the appellant.

Mr. Jitender Dhanda, Advocate for respondent No.1.

Mr. Lalit Garg, Advocate
for respondent No.2-insurance company.

SNEH PRASHAR, J.

CM-16700-01-CII-2014

There being delay of 267 days in filing and 10 days in refiling the appeal, separate applications under Section 5 of the Limitation Act and under Rule 5(1) Chapter-I Part-A Volume-5 of the High Court Rules and Orders read with Section 151 of the Code of Civil Procedure for condonation of delay were filed by the appellant.

Considering the averments made in the applications, the delay in filing as well as in refiling is condoned subject to all just exceptions and the applications are disposed of.

FAO-6083-2014

By way of this appeal, appellant-claimant Amit Kumar seeks

Tribunal, Hisar (for short, “the Tribunal”) vide award dated 11.04.2013 passed in Claim Petition No.72 of 2012 filed by him on account of injuries sustained in a motor vehicular accident that took place on 11.05.2010.

Precisely, the facts are that on 11.05.2010, the appellant-claimant was going to DAV School, Hisar by means of Honda Eterno Scooter bearing registration No.HR-2P-0384 of his friend Yogesh when his scooter was hit by a car bearing registration No.HR-20R-0948 (hereinafter referred to as the “offending car”). His allegation was that the accident occurred due to rash, negligent and high speed driving of the said car by Kuldeep Singh (since deceased/respondent No.1 in the claim petition).

A First Information Report No.213 dated 12.05.2010 under Sections 279, 337 and 338 of the Indian Penal Code in respect of the accident was registered against Kuldeep Singh at Police Station Civil Lines, Hisar.

The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) against driver, owner and insurer of the offending car claiming compensation for the injuries suffered by him during the accident.

The petition was contested by respondents No.2 and 3 and respondent No.1 was reported to have died. Respondent No.2 in his written statement submitted that the accident occurred due to the rash and negligent driving of the appellant. Respondent No.3 filed separate written statement denying its liability to pay compensation on the ground that the driver of the offending car was not holding a valid driving licence at the time of accident and that the vehicle was being driven in contravention of the terms and conditions of the insurance policy.

On the basis of the rival pleadings of the parties, issues were settled. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly accepted the petition and awarded compensation of Rs.78,000/- to the appellant alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the award, the appellant preferred the instant appeal.

The submissions made by Mr. Amit Singla, learned counsel for the appellant, Mr. Jitender Dhanda, learned counsel for respondent No.1 and Mr. Lalit Garg, learned counsel for respondent No.2-insurance company have been heard and record perused.

Learned counsel for the appellant argued that the compensation awarded by learned Tribunal considering the nature of injuries suffered by the appellant is on the lower side. The appellant is still incurring expenses on his treatment and is not able to enjoy the basic amenities of life. Nothing was awarded to the appellant on account of mental agony, loss of enjoyment of life, attendant charges, special diet and loss of future income. The amount awarded under the heads of hospitalization, pain and suffering and transportation are also on the lower side.

From the medical evidence discussed by learned Tribunal in Para No.14 and 18 of the award, it is clear that the appellant had suffered grievous and multiple injuries which resulted in disability to the extent of 12% qua his right leg. PW2 Dr. M.K. Garg, who proved the disability certificate Ex.P25 deposed that the disability was permanent. Learned Tribunal awarded Rs.25,000/- to the appellant for the disability suffered by

him. Considering the fact that the appellant is a young boy and the disability in right leg suffered by him would not only create obstruction in discharge of daily necessities of life but will also hamper to some extent discharge of his occupational duties, therefore, the compensation awarded on this count is enhanced to Rs.36,000/-. It had come in evidence that the appellant remained hospitalized for three days. The multiple grievous injuries suffered by the appellant and the period of his hospitalization had obviously caused grave pain and suffering to him for a long time. Considering the same, the amount of Rs.15,000/- awarded by learned Tribunal for the pain and suffering is enhanced to Rs.30,000/-. The amount of Rs.6,000/- awarded to the appellant on account of hospitalization is enhanced to Rs.11,000/-. Further, an amount of Rs.15,000/- is allowed to the appellant for loss of amenities of life.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 11.04.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.46,000/- shall be paid to the appellant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

31.01.2017.
jitender sharma

Whether speaking / reasoned : **Yes**

Whether reportable : **Yes**