

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

Sr. No.222

FAO No.8699 of 2015

Date of decision: 18.08.2017

Deepak Kumar

....Appellant

versus

Gurjant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr. HPS Bhinder, Advocate
for respondents No.1 and 2.

Mr. Amit Kumar Goyal, Advocate
for respondent No.3.

* * *

DEEPAK SIBAL, J. (Oral)

The appellant, on being injured in a road accident filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short the 'Act') seeking therein compensation from the owner and driver as also the Insurance Company of the vehicle involved in the accident which was a Tipper bearing registration No.PB 11 AT 9170 (for short the 'offending vehicle'). The Motor Accident Claims Tribunal, Patiala (for short the 'Tribunal') after recording a finding that the appellant had been injured on account of rash and negligent driving on the part of respondent No.1

determined compensation to the tune of Rs.2,73,200/- to be paid to the appellant jointly and severally by all the respondents.

Since, learned counsel for the appellant only seeks enhancement of the awarded compensation under the head 'loss of salary', it would be suffice to refer to the evidence led and the award of the Tribunal qua that head only.

PW-4 Anil Singh, who was a Labour Contractor and was produced by the appellant deposed that the appellant was working in M/s Patiala Cotspin Factory, Bhawanigarh Road, Samana till 20.03.2012 (i.e. the date of accident) and on account of injuries suffered by him, he remained out of job till 31.07.2014. He further deposed that upon joining his job on 01.08.2014, he was drawing a monthly salary of Rs.6500.

On the basis of the above evidence, the Tribunal went on to determine the total compensation to be paid under the head 'loss of salary' to be Rs.28,200/-. Such a figure was arrived at after taking the period when the appellant was out of job to be four months and 10 days.

Learned counsel for the appellant submitted that once it had been proved by the appellant that on account of the injuries suffered by him as a result of the accident which he met with the offending vehicle, he had remained out of job for two years, 04 months and 10 days then the Tribunal erred in determining the compensation for loss of salary by taking such period to be only 04 months and 10 days.

Learned counsel for the respondent-Insurance Company submitted that the claim of the appellant is not liable to be accepted for the reason that to prove his injuries and the disability certificate, no doctor was examined; it was impossible that the appellant would have remained

out of job for over 02 years and it was likely that he would have served under some other contractor in another company.

The statement and cross-examination of PW-4 Anil Singh, reads as under:-

Statement in Chief

"1. That the deponent states on oath that he is working as Labour Contractor in M/s Patiala Cotspin, Bhawanigarh Road, Samana and use to supply the Labourer to the said factory and Deepak Kumar was working in the said factory under my supervision. He was working as helper with me and was drawing Rs.10,500/- (Rs. Ten thousand five hundred only) approximately per month and was doing work for about 10-12 hours daily before the accident.

2. That the deponent states on oath that Deepak Kumar worked in the said factory under my supervision uptill 20.03.2012 (Date of accident) and he again started working in Patiala Cotspin on 01.08.2014 (after the accident). During the said period i.e. 21.03.2012 to 31.07.2014 Deepak Kumar use to visit M/s Patiala Cotspin, Samana and contacted me many a times for work but as his condition was not good being not physically fit i.e. his capacity of work is less and he cannot work for 10-12 hours per day.

3. That the deponent states on oath that since his joining from 01.08.2014, now he is drawing money (salary) to the tune of Rs.6500/- per month as he could work only for lesser hours i.e. 6-7 hours daily.

4. That the deponent states on oath that Deepak Kumar is a very hard working boy. I will pay him Rs.10,500/- when his work efficiency is upto mark and physically fit."

Cross-Examination

"I have got no record. In our factory about 400/450 workers are working. I am working as a labour contractor with M/s Patiala Cotspin, Bhawanigarh Road, Samana and 10 to 15 persons are working under me. The persons who are working under me in the said company are not covered under ESI Scheme. It is correct that claimant is not employed by Patiala Cotspin Factory but claimant is employed and paid by me and claimant is working in the said company. It is incorrect to suggest that it is within my power to dispense with services of the claimant and company does not have any such power to do so. No ESI Coverage is provided to the employees by the factory. The factory makes payment to me in cash daily in the evening which I distribute among the workers. I have not recorded the working hours of the employees provided by me to the factor so far. It is wrong to suggest that I have deposed falsely regarding employment of the claimant. It is also wrong to suggest that the claimant is covered under ESI Scheme. I have not seen any document with regard to medical treatment of the claimant till date. Volunteered-I visited him in the hospital. It is wrong to suggest that I have deposed falsely."

PW-4 Anil Singh had clearly deposed that he was working as a Labour Contractor supplying labour to M/s Patiala Cotspin, Bhawanigarh Road, Samana where the appellant was working under his supervision; the appellant had worked in the factory till 20.03.2012 (i.e. the date of the accident); due to the accident the appellant remained out of job till 31.07.2014 as he rejoined the factory only on 01.08.2014 and that on his rejoining the factory, the appellant was paid monthly salary of Rs.6500/-.

His cross-examination reveals that not even a suggestion was put to him by

the respondents with regard to the period that the appellant remained out of job and therefore, the stated period would have to be accepted. Such period is 02 years, 04 months and 10 days. There is nothing found on the record as to why the Tribunal reduced such period to 04 months and 10 days. There is also no reason found to be forthcoming from the order of the Tribunal in that regard. No evidence to the contrary has also been led by the respondents.

Resultantly, the appellant is held entitled to the grant of compensation under the head 'loss of salary' for 02 years, 04 months and 10 days, the period he has proved on record when he remained out of job due to injuries suffered by him in the accident. On such additional compensation, the claimant would also be entitled to get interest @ 6% per annum which shall run from the date of filing of the claim petition till the date of its actual realization.

The appeal stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

August 18, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No