

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

FAO No.5735 of 2012 (O&M)
Date of decision : 08.01.2018

Mukesh Kumar

...Appellant

Versus

Darshan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nakul Sharma, Advocate for the appellant.

Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate for respondent No.2.

Mr. P.S. Saini, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

CM No.26611-CII of 2012

The application is for condoning the delay of 1021 days in filing the appeal. The claimant is in appeal for enhancement of the compensation in a motor accident case. It is asserted in the application that in fact the appeal was filed on 15.02.2010 under Diary No.470442, however it was returned with certain objections but the clerk of the counsel misplaced the file and did not inform the counsel. The application is supported by an affidavit. Although, the application has been opposed by the learned counsel for the respondent-Insurance Company, however, taking into consideration the fact that the appeal was filed on 15.02.2010 and

particulars of the filing have been given which are not being disputed, therefore, the delay of 1021 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The appellant-injured is in appeal against the award passed by the Motor Accident Claims Tribunal dated 23.09.2009. The claimant was a young man of 28 years at the time of the accident. He suffered multiple fractures in a motor accident. Doctors have certified that the appellant has suffered 20% permanent disability which is not likely to improve. The Motor Accident Claims Tribunal has awarded a sum of ₹47,000/- towards the loss of income, Special Diet and Pain and Suffering, apart from ₹79,000/- towards reimbursement of bill, of medicines and hospitalization.

Taking into consideration the evidence brought on record which unfortunately was not discussed by the Motor Accident Claims Tribunal, this Court is of the considered opinion that this appeal deserves to be allowed and the compensation awarded under various heads needs to be increased.

The learned Motor Accident Claims Tribunal has not awarded any amount on account of loss of income of the injured who remained under treatment for a period of more than 6 months. The appellant was admitted in the hospital on 20.09.2005 and discharged on 30.09.2005. Thereafter, he was once again admitted on 26.10.2005 and discharged on 29.10.2005. For third time, the appellant was admitted in the hospital on 14.03.2006 and discharged on 17.03.2006. Thus, it can be concluded that the appellant remained under constant treatment for a period of 6 months. However, the

learned Motor Accident Claims Tribunal has not granted any amount on account of loss of income. Even if the minimum wages are taken into consideration, the appellant shall be entitled to at least ₹24,000/- on that account.

Doctor has been examined who has stated that the disability of the appellant is permanent and is not likely to improve. The appellant was a young man of 28 years on the date of the accident. The learned Motor Accident Claims Tribunal has awarded only ₹40,000/- on account of the disability.

Keeping in view the age of the appellant on the date of the accident, in the considered opinion of this Court, the amount awarded is on the lower side. The appellant has his entire life ahead of him. This Court is of the opinion that the appellant deserves to be awarded a sum of ₹60,000/- on account of the disability. The appellant shall further be entitled to Special Diet ₹10,000/- and pain and suffering ₹15,000/-. Thus, total enhanced amount comes to ₹38,000/-.

The amount enhanced i.e. ₹38,000/- shall carry interest at the rate of 6% p.a. from the date of filing of the petition.

In view of the above, the present appeal is allowed.

08.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No