

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-241-2015 (O&M)
Date of Decision: 18.09.2018

Sandeep Kumar

--Appellant

Versus

Sher Singh & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Sanjeev Patiyal, Advocate for the appellant.

Mr. Vinod Chaudhari, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

CM-672-CII-2015

Instant application has been filed under Section 151 CPC praying for condonation of delay of 73 days that has occurred in re-filing the accompanying appeal.

In view of the averments made in the application, sufficient cause has been shown to condone the delay of 73 days that has occurred in re-filing the instant appeal.

Accordingly, prayer in the application is allowed.

Delay in re-filing the appeal is condoned.

Main Appeal

Claimant Sandeep Kumar has filed the instant appeal seeking enhancement of compensation for the injuries suffered by him in a motor vehicle accident that took place on 19.7.2011 involving the offending vehicle/truck bearing registration no. PB-02-AS-9777.

The Motor Accident Claims Tribunal, Karnal vide award dated 14.1.2014 has awarded a total compensation amount of Rs.1,38,573/- along with interest @ 9% per annum from the date of filing of the petition till

realization. The compensation amount under different heads has been computed as follows:-

1.	<i>Medical expenses</i>	-	<i>Rs.1,10,573/-</i>
2.	<i>Pain and suffering</i>	-	<i>Rs.5,000/-</i>
3.	<i>Loss of income</i>	-	<i>Rs.10,000/-</i>
4.	<i>Transportation charges</i>	-	<i>Rs.5,000/-</i>
5.	<i>Nutritious diet</i>	-	<i>Rs.4,000/-</i>
6.	<i>Attendant charges</i>	-	<i>Rs.4,000/-</i>
	<i>Total</i>	-	<i>Rs.1,38,573/-</i>

Counsel for the appellant submits that the amount awarded by the Tribunal is grossly inadequate and would require enhancement under the different heads.

Per contra, counsel representing the contesting Insurance Company while broadly supporting the award, fairly concedes that there would be scope of marginal enhancement under certain heads in the nature of pain and suffering and attendant charges.

Counsel for the parties have been heard.

Briefly, it may be noticed that claim petition had been filed under Section 166 and Section 140 of the Motor Vehicles Act on the pleadings that claimant/appellant Sandeep Kumar was proceeding on his motorcycle bearing registration no. HR-75-0192 on which Sushil was pillion riding and they were struck by the commercial vehicle bearing registration no. PB-02-AS-9777 which was being driven in a rash and negligent manner. As a result the motorcycle fell down and the appellant sustained injuries on his head, chest, right hand and fingers. Claimant is stated to have suffered a fracture on his right hand finger. He was immediately shifted to Civil Hospital, Indri and from where was shifted to Civil Hospital, Karnal and thereafter he was taken to the Brain and Spine

Hospital being run by Dr. Sameer Aggarwal and wherein he remained admitted from 19.7.2011 to 25.9.2011. FIR No.259 dated 20.7.2011 under sections 279, 337 of the I.P.C was got registered at Police Station, Indri. In the claim petition it was asserted that prior to the accident, the claimant was hail and hearty. He was owner of about four acres of land and cultivating the same and used to earn Rs.15,000/- per month. Claimant stated that he was 26 years of age at the time of accident. A sum of Rs.6 lakhs was spent on treatment, doctor fee, medicines, transportation and special diet etc. The compensation amount claimed was Rs.20 lakhs along with interest @ 12% per annum. Claim petition was contested by respondent no.1 i.e. driver denying the factum of accident. Respondent no.2 i.e. owner of the truck also set up a case of denial. Respondent no.3 Insurance Company filed a written statement stating that the driver/respondent no.1 was not holding a valid and effective driving license and that the insured vehicle was being driven in contravention of the terms and conditions of the insurance policy.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. *Whether the accident resulting into injuries to the claimant took place due to rash and negligent driving of truck bearing registration no. PB-02AS-9777 being driven by respondent no.1.OPP.*
2. *If Issue No.1 is proved, whether the claimant is entitled to any compensation. If so, how much and from whom?OPP*
3. *Whether the claim petition is not maintainable?OPR*
4. *Whether the driver of the offending vehicle was not holding any valid and effective driving licence at the time of accident, as alleged?OPR.*
5. *Relief.”*

In so far as Issue No.1 is concerned, findings have been returned in favour of the claimant and it has been held that the injuries have been suffered on account of accident involving the offending/insured vehicle which was being driven in a rash and negligent manner by driver/respondent no.1.

In so far as compensation amount is concerned, a total compensation amount of Rs.1,38,573/- has been awarded as detailed herein above.

The Apex Court in ***R.D. Hattangadi Vs. Pest Control (India) Private Limited (1995) 1 S.C.C 551*** while dealing with the matters involving claim of the compensation under the Motor Vehicles Act had observed as follows:-

“In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

In ***Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC, 343*** the Supreme Court had held that a person is not only to be compensated for the physical injury but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

Adverting back to the facts of the present case, claimant had adduced on record evidence in the shape of medical bills, Ex.P-1 to P-41

which reflected a total amount of Rs.1,10,573/- having been spent on medical treatment, doctor fee, medicines etc. The Tribunal in the award has upheld such amount. The same, as such, would not require any intervention.

Tribunal has awarded a meager amount of Rs.5,000/- towards pain and suffering. It has come on record that the claimant remained admitted in Sameer Aggarwal Brain and Spine Hospital, Karnal from 19.7.2011 to 25.9.2011 and had suffered fracture in his right hand finger and which has been operated upon. Furthermore, he had also sustained injuries on his head, chest and both feet. Evidence in the shape of M.L.R Mark-A and Discharge Card Ex. P-42 had been adduced. Keeping in view the injuries and the period of hospitalization, the amount under the head of pain and suffering would stand enhanced from Rs.5,000/- to Rs.50,000/-.

As regards income, claimant/appellant had claimed that he is cultivating four acres of land and earning Rs.15,000/- per month. No cogent and conclusive evidence had been led to substantiate such assertion. Against the backdrop of the date of accident i.e. 19.7.2011 it would be safe to presume that the claimant was earning Rs.5,000/- per month i.e. at par with the minimum wages admissible to a daily wager. On account of the accident, injuries suffered, period of hospitalization and a reasonable time to recuperate from the injuries sustained, an amount of Rs.30,000/- is awarded towards loss of income i.e. Rs.5,000x6 months.

Even the amount awarded under the heads of nutritious diet and attendant charges would require to be enhanced to Rs.10,000/- each.

In view of the above, the compensation amount is enhanced and is calculated as follows:-

1.	<i>Medical expenses (as awarded by the Tribunal)</i>	-	<i>Rs.1,10,573/-</i>
2.	<i>Pain and suffering</i>	-	<i>Rs.50,000/-</i>
3.	<i>Loss of income</i>	-	<i>Rs.30,000/-</i>
4.	<i>Transportation charges</i>	-	<i>Rs.5,000/-</i>
5.	<i>Nutritious diet</i>	-	<i>Rs.10,000/-</i>
6.	<i>Attendant charges</i>	-	<i>Rs.10,000/-</i>
	<i>Total</i>	-	<i>Rs.2,15,573/-</i>

The afore-calculated enhanced compensation amount be released in favour of the claimant/appellant along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

18.09.2018

lucky

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No