

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

FAO No.3218 of 2015 (O&M)

Date of decision: 23.04.2018

BABY MILLI

... Appellant

Versus

VINEET CHAUHAN AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ankit Gautam, Advocate
for the applicant-appellant.

Ms. Deepa Jain, Advocate for
Mr. Yash Dev Kaushik, Advocate
for respondents No.1 and 2.

Mr. M.B. Jain, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.9633-CII of 2015

Prayer in this application is for condoning delay of 715 days in filing the appeal.

Counsel for the applicant would urge that as father of the minor was not aware of technicalities of law as well as period of limitation, he could not prefer the appeal within the stipulated period. It is further submitted that provisions of the Motor Vehicles Act, 1988 dealing with grant of compensation to the victim are benevolent social legislation to make good the loss as the money can do. In addition, it is argued that since

the victim is a minor, she cannot be made to suffer on technical considerations when otherwise it has been consistently held by the Courts that a liberal view is required to be adopted while dealing with application for condonation of delay so that meritorious claims are not thrown overboard at the threshold or on technical consideration.

Counsel for the insurance company, on the contrary, has opposed the prayer for condoning delay of 715 days. It is argued that ignorance of law is no excuse for allowing indulgence of the Court.

Be that as it may, it is undisputed position of the case that the appeal has been filed by a minor victim seeking enhancement of compensation on account of injuries sustained by her in a motor vehicular accident that left her disable to the extent of 70% on account of amputation of her left leg below knee. As has been rightly argued by counsel for the applicant/appellant, meritorious claims cannot be denied on technical consideration of delay etc. particularly when a victim has approached the Court for enhancement of compensation. Keeping in view the legislative intent behind the provisions dealing with grant of compensation along with that interest of a minor victim is involved in the present lis, it is expedient in the interest of justice that delay in filing the appeal is condoned and ordered accordingly.

For the foregoing reasons, the application is allowed and delay of 715 days in filing the appeal stands condoned.

Main Case

Baby Milli aged about 4 years has filed the present appeal through her father Sh. Bijender @ Lala seeking enhancement of compensation assessed by the Motor Accidents Claims Tribunal, Nuh, District Mewat on account of injuries sustained in a motor vehicular accident that took place on 17.09.2010.

The Tribunal has awarded consolidated sum of Rs.3,84,868/- including an amount of Rs.1,94,868/- towards medical expenses based upon bills and cash memos marked as exhibits.

Counsel for the appellant would argue that compensation awarded by the Tribunal is grossly inadequate. To bring home his contention, it is submitted that the victim has suffered disability to the extent of 70% on account of post traumatic amputation of left leg below knee.

Counsel representing the insurance company has not disputed the extent of disability suffered by the victim on account of amputation of left lower limb but would urge that disability suffered by the victim is to a particular limb and not qua the whole body, as deposed by the doctor examined by the claimant.

The Tribunal in para 23 of the award has made reference to series of documents with regard to medical expenses incurred qua treatment of the victim and eventually allowed reimbursement of Rs.1,94,868/- towards medical expenses and the same is affirmed.

The Tribunal in para 23 itself has noticed that the child has suffered disability to the extent of 70%. As per the disability certificate issued by the medical board of General Hospital, Mandikhera, District Mewat, there is amputation of left leg below knee, thus, disability of 70%. The child was 5 years old at the time of assessment of disability in the year 2011. Taking into consideration age of the child, nature and extent of disability, in my considered opinion, 70% disability suffered by the victim should be treated as functional disability and accordingly the claimant is awarded an amount of Rs.5,00,000/- qua pain and sufferings already undergone, to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort etc. and loss of amenities of life, in the light of judgment of Hon'ble the Supreme Court **Master Mallikarjun Vs. Divisional Manager, The National Insurance Co. Ltd. and another, 2013(4) RCR (Civil) 295.**

The child remained hospitalised twice. Initially, she was admitted on 17.09.2010 but it is not clear on record as to when she was discharged from the hospital. On the second occasion, she was admitted on 02.03.2011 and discharged on 04.03.2011. A sum of Rs.25,000/- is awarded for discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation.

As has been noticed hereinbefore, the victim was 4 years old at the time of occurrence and suffered amputation of left leg below knee. She would be limping throughout her life. This injury would have serious

adverse affect on her matrimonial prospect. She is awarded an amount of Rs.1.5 lakh for loss of matrimonial prospects.

The child requires artificial limb to make good the loss of her left leg so that she can walk on two legs. She is awarded an amount of Rs.2 lakh for the price of limb.

The total compensation is Rs.10,69,868/- and the additional amount is Rs.6,85,000/- (10,69,868 - 3,84,868) payable with interest @ 7.5% per annum from the date of petition till realization. The additional amount shall be invested in a fixed deposit till the child attains majority or for a period of three years, whichever is later. Interest accruing on FDR shall be payable to guardian of the minor for meeting her expenses. The guardian is left at liberty to file an application before the Tribunal for withdrawal of amount out of fixed deposit, for meeting any requirements qua education and other needs of the child.

The appeal is partly allowed in the aforesaid terms.

All other terms and conditions of the award shall remain intact.

23.04.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No