

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-5370-2014 (O&M)

Date of Decision:27.03.2018

Sonam Devi

.....Appellant

Versus

Harpreet Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Ms. Gurdeep Kaur, Advocate for
Mr. Sandeep K. Sharma, Advocate,
for the appellant.**

**Mr. V.K. Garg, Advocate,
for respondent No.3-Insurance Company.**

HARI PAL VERMA, J.(Oral)

CM-14987-CII-2014

This is an application under Section 5 of the Limitation Act for condonation of 434 days' delay in filing the appeal.

Learned counsel for the appellant submits that father of the appellant, who was pursuing the claim petition, was in the Armed Forces and was posted in J&K. After the decision of the claim petition, he failed to take recourse of further remedy of appeal for enhancement of the amount of compensation as he was not aware in this regard. In the 4th week of March, 2014, when the appellant along with her father went to Mohali Court to file a complaint for claiming damages of the scooter in the said accident, then their counsel asked them as to why have they not filed an appeal for

enhancement of compensation and suggested them to pursue the said

remedy instead of filing a complaint. Thereafter, they approached their counsel. Thus, the present appeal was filed and the delay of 434 days has occurred.

Learned counsel for respondent No.3-Insurance Company submits that appellant has not been able to show sufficient cause, so as to condone the inordinate delay. However, he submits that the appellant-claimant should not be granted interest for the said period in the event the delay is condoned.

The pleaded case of the appellant is that father of the appellant was not aware of the fact that they could take recourse of further remedy of appeal for enhancement of the amount of compensation, and it is for this reason the delay has occurred. The Act is a beneficial piece of legislation. Therefore, for the reasons stated in the application, same is allowed and the delay of 434 days in filing the appeal is condoned.

FAO-5370-2014 (O&M)

Claimant-injured Sonam Devi has filed the present appeal seeking enhancement of compensation over and above the compensation awarded by the Motor Accident Claims Tribunal, Rupnagar (for short “the Tribunal”) vide award dated 01.10.2012.

In a claim-petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of injuries suffered by her in the motor vehicular accident, which took place on 27.01.2011, the Tribunal has awarded a total compensation of ₹2,00,000/- in favour of the appellant-claimant. The Tribunal has further awarded interest @ 6% per annum from the date of filing of the claim petition till its realization.

Not satisfied with the aforesaid amount of compensation, the

appellant has filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellant has argued that on 27.01.2011, appellant-Sonam Devi along with her mother Radha Devi was going towards Phase-I, Mohali side on a Honda Aviator Scooter bearing registration No.PB-65-H-4702 for some domestic work and when they reached near MOI Chowk, Phase-I, then mother of the appellant stopped her scooter to wait for clearance of the road. In the meantime, the offending bus bearing registration No.PB-10-AN-7865 being driven by its driver came from Phase-1, Mohali side and struck the same against the scooter. As a result of this accident, appellant as well as her mother received multiple serious injuries. After the accident, they were taken to Civil Hospital, Mohali from where they were referred to PGI, Chandigarh, However, mother of the appellant died on 28.01.2011, whereas the appellant remained admitted in the hospital upto 22.02.2011.

Learned counsel for the appellant has argued that the awarded amount of compensation is on the lower side. In the accident, the appellant has suffered serious injuries for which she had to remain admitted in PGI, Chandigarh for about 26 days. In the accident, both the legs of the appellant and upper knee were badly fractured and her arms and left foot also got fractured. The doctor of Civil Hospital, Ropar, has issued the Disability Certificate (Ex.P-1) stating therein that both the arms and legs of the appellant were fractured and now there is no complete movement of knee and hip joints and she suffered permanent disability to the extent of 25%. Therefore, she being a young girl of 15 years as on the date of accident, is required to be awarded adequate compensation on account of her permanent

disability as her marriage prospects have also been adversely affected. Moreover, the disability suffered by the appellant is permanent in nature. On account of injuries, she had to remain in the hospital for a considerable time whereas after being discharged, she was not in a position to perform her day-to-day functions. Therefore, she is entitled for compensation for pain and suffering and attendant charges etc. as well.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that no doubt Disability Certificate (Ex.P1) has been produced on record by the claimants but they have failed to examine any doctor in support of the said Disability Certificate and since the Tribunal has considered the said Disability Certificate and has awarded the compensation. There is no certificate issued after the Disability Certificate (Ex.P1) dated 21.03.2012 to establish that the said disability still persists.

I have heard the learned counsel for the parties.

The accident and injuries are not in dispute. The only dispute is regarding permanent disability. During the course of arguments, learned counsel for the appellant has produced on record a photocopy of the Disability Certificate (Ex.P1), which shows that on account of injuries suffered by the appellant, whereby both the arms and legs were fractured, the appellant has suffered restriction in movement on account of such injuries. There is no full movement of knees and hip joints because of this permanent disability. Though, the accident has occurred on 27.01.2011 but the said Disability Certificate (Ex.P1) was issued by the Civil Hospital, Ropar, on 21.03.2012 i.e. after more than one year. On the date of issuance of the Disability Certificate, the doctor has assessed the permanent

disability to the extent of 25%. No doubt, the Tribunal has awarded the expenses so incurred on the treatment as ₹70,000/- but this Court finds that as the claimant remained under mental tension and agony during her hospitalization, more particularly when she lost her mother in the same accident, she being unmarried, her marriage prospects must have adversely affected. In somewhat similar circumstances, the Hon'ble Apex Court in case **S. Perumal Versus K. Ambika and another, 2015(2) R.C.R. (Civil) 228**, has considered a case of a claimant who suffered 25% permanent disability in the motor vehicle accident. In that case, the Tribunal has awarded ₹25,300/- but the Hon'ble Supreme Court has enhanced the said amount to the tune of ₹4,43,500/-. In that case, the injured was a poultry labourer. Therefore, this Court finds support from the said judgment passed by this Court in **S. Perumal's case(supra)**, wherein the Hon'ble Apex Court has awarded a lump sum amount of ₹2,00,000/- towards loss of future earnings on account of permanent disability. While dealing with the similar controversy, the Hon'ble Apex Court has considered as under:-

“The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident. In 2011 ACJ 1 (SC) ([Raj Kumar v. Ajay Kumar](#)), this Court considered the principles for awarding compensation in injury cases, and held as under:

“The provision of the [Motor Vehicles Act, 1988](#) ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of

wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. 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...

(5) The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earnings during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity.)

In routine personal injury cases, compensation will be awarded only under heads.

(i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the

evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

18. In 2011(4) R.C.R. (Civil) 817 : 2011(5) Recent Apex Judgments 594 : 2012 ACJ 28 ([Govind Yadav v. New India Assurance Company Limited](#)), this Court held as under:-

"15. In our view, the principles laid down in [Arvind Kumar Mishra v. New India Assurance Co. Ltd.](#), 2010(4) R.C.R. (Civil) 917 : 2010 (6) Recent Apex Judgments (R.A.J.) 276 : 2010 ACJ 2867 (SC) and [Raj Kumar v. Ajay Kumar](#), 2011 ACJ 1 (SC), must be followed by all the tribunal and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

In the case in hand, the claimant-injured is permanent disabled to the extent of 25% and she is an unmarried girl. Therefore, this Court cannot ignore the fact that it must have affected her matrimonial prospects and since she has also lost her mother in the same accident, services of an attendant have become necessary.

The claimant remained in PGI, Chandigarh for more than 26 days. It can be presumed that immediately after being discharged from the hospital, she will not be in a position to revert to normal life and must have remained on rest for a considerable period. Accordingly, the amount of

future earnings is enhanced to ₹2,00,000/-. Besides this, a sum of ₹30,000/- is also awarded to her towards the pain and sufferings. The amount of ₹70,000/- awarded by the Tribunal towards medical expenses shall however remain intact.

Accordingly, the impugned award dated 01.10.2012 is modified and as against the awarded amount of ₹2,00,000/-, this Court finds that the claimant shall be entitled for a total compensation of ₹3,00,000/- along with interest @ 7.5% from the date of filing of the claim-petition till its realization.

Since the appeal has been filed after a delay of 434 days, the appellant-claimant shall not be entitled to interest for the delayed period for which the appeal remained barred by limitation.

With the aforesaid modification in the award, the present appeal stands disposed of.

March 27, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No