

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

FAO No. 5603 of 2014(O&M)

Date of decision: 26.11.2018

Som Nath

.....Appellant

VERSUS

Sandeep Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Ashwani Arora, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate for respondent-Insurance
Co.

REKHA MITTAL, J. (Oral)

CM No.15569-CII of 2014

Prayer in this application is for condoning delay of 78 days in
filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit of Som Nath, the appellant, the application is allowed. Delay of
78 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.5603 of 2014

The injured is in appeal seeking enhancement of
compensation awarded by the Motor Accidents Claims Tribunal,
Chandigarh (in short 'the Tribunal') on account of injuries sustained in a
motor vehicular accident that took place on 20.06.2011.

The Tribunal has assessed compensation of Rs.1,90,949/- detailed hereunder:-

Medical charges	Rs.6445/-
Transportation charges	Rs.5000/-
Compensation for engaging an attendant	Rs.10,000/-
Compensation for special diet	Rs.10,000/-
Pain and suffering and loss of enjoyment	Rs.15,000/-
Compensation for loss of income	Rs.16,200/-
Compensation for permanent disability	Rs.1,28,304/-

Counsel for the appellant would contend that the Tribunal has accepted plea of the claimant that he was working as a Driver but assessed his income at Rs.5400/- per month which is on lower side. Another submission made by counsel is that as disability of 18% proved by Dr. D. K. Pathak PW-1 is functional disability and that he would have difficulty in driving heavy vehicle, functional disability may be assessed more than what has been assessed by the Tribunal for computing loss of income.

Another submission made by counsel is that the Tribunal has allowed loss of income qua the period of treatment and recovery to the tune of Rs.16,200/- at the rate of Rs.5400/- per month. The victim was initially operated on 29.06.2011 but on 08.09.2011, another operation was performed for removal of screws etc. It is argued that claimant may be allowed total loss of income at least for a period of six months. Compensation allowed under other heads is inadequate and needs enhancement.

Counsel for the insurance company, on the contrary, has supported assessment made by the Tribunal with the plea that there is no

justification for enhancement of compensation. However, she would inform that the insurance company has been given right of recovery against respondent No.2 – Balwinder Singh Sandhu, owner of the offending vehicle.

The Tribunal has accepted plea of the injured that he was working as a Driver before the unfortunate occurrence. His income has been assessed at Rs.5400/- per month which is more than minimum wage available to a driver at the relevant time, in view of notification issued by the State of Punjab. The Tribunal has allowed loss of income for a period of three months. Taking into consideration the materials on record coupled with that claimant was a driver, he shall be entitle to loss of income qua period of treatment and recovery to the tune of Rs.27,000/- @ Rs.5400/- for a period of five months (additional amount of Rs.10,800/-).

Dr. D.K. Pathak, Senior Medical Officer (Orthopedics) in GMSH, Sector 16, Chandigarh, a member of the Medical Board constituted to assess disability of the injured, was examined. He has deposed that victim has suffered functional permanent disability of 18% and proved disability certificate Ex.P1. He has opined that the patient would have difficulty in driving heavy vehicle. As the injured was a driver and disability suffered by him would create difficulty in driving heavy vehicles, interest of justice would be served if functional disability is assessed to the tune of 35%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of income qua disability is calculated at Rs.2,49,480/- [Rs.7,12,800/- (Rs.5400 x 12 x 11) x 35%].

The medical reimbursement allowed by the Tribunal is correct and affirmed. Claimant shall be entitle to additional amount of Rs.10,000/-

under the heads transportation charges, services of an attendant and special diet. An amount of Rs.15,000/- allowed by the Tribunal for pain and suffering and loss of enjoyment shall be appropriated towards pain and suffering. He is allowed additional amount of Rs.15,000/- for loss of amenities of life.

In view of the above, total compensation comes to Rs.3,47,925 /- and the additional amount is Rs.1,56,976/- (Rs.3,47,925/- - Rs.1,90,949/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

NOVEMBER 26, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no