

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5555 of 2015(O&M)

Date of Decision:17.4.2018

Ramphal

---Appellant

vs.

Surender and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sunny Bhardwaj, Advocate
for the appellant
Mr. Suvir Dewan, Advocate
for the insurance company

Rekha Mittal, J.

CM No. 17358-CII of 2015

Prayer in this application is for condoning delay of 32 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 32 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 5555 of 2015

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained by him in a motor vehicular accident that took place on 31.12.2012.

The Motor Accidents Claims Tribunal, Hisar (in short “the

Tribunal”) has awarded compensation of Rs. 80,082/-, detailed hereunder:-

Loss of income towards permanent disability	Rs. 46,200/-
Pain and sufferings	Rs. 5,000/-
Special diet	Rs. 5,000/-
Attendant charges	Rs. 5,000/-
Loss of income on account of admission in hospital	Rs. 5,000/-
Transportation	Rs. 2,000/-
Treatment expenses	Rs. 11,882/-

Counsel for the appellant would argue that compensation awarded by the Tribunal under various heads is on lower side and needs enhancement. It is further argued that though the claimant has suffered disability to the extent of 7% but in view of nature of his job, the same is liable to be assessed at a higher rate for the purpose of computing loss of income qua disability.

Counsel representing the insurance company has supported assessment made by the Tribunal with the plea that there is no justification for enhancement of compensation.

The claimant examined Dr. T.R.Garg, Garg Hospital, Hansi PW6. He has deposed that claimant suffered fracture of both bones of right leg. He was operated upon and fracture was fixed with interlocking nail. Patient was discharged on 5.1.2013.

Dr. Reena Jain, Medical Officer, General Hospital, Hisar was examined to prove extent of disability suffered by the victim and disability certificate Ex. P2. She has testified that the injured has been rendered permanently disabled to the extent of 7% in relation to his right lower limb. The disability certificate is marked as Ex. P2.

Plea of the claimant is that he was working as a carpenter in H.P.Cotton Mill, Mayyar, Tehsil and District Hisar and was also running a shop of furniture privately and used to earn Rs. 23,000/- per month. However, the claimant did not examine a representative of H.P.Cotton Mill, Mayyar, Hisar nor

brought any documentary evidence with regard to his employment with the aforesaid concern or running a private shop of furniture. In absence of clear and cogent evidence by the claimant with regard to his avocation and income, the Tribunal has relied upon minimum wage fixed by the State of Haryana and available at the relevant time and accordingly assessed his income at Rs. 5000/- per month. There is no tangible material on record to interfere in findings of the Tribunal with regard to income of the victim assessed at Rs. 5000/- per month.

The victim has suffered disability to the extent of 7% qua his right lower limb. Perusal of disability certificate would reveal that the victim would have difficulty in walking fast and squatting on account of disability to his right lower limb. Taking into consideration the nature of work to be performed by the victim coupled with extent of disability, interest of justice would be served if disability is assessed at 15% for computing loss of income. The multiplier adopted by the Tribunal is affirmed. In this manner, loss of future income qua disability comes to Rs. $5000 \times 12 \times 11 = 6,66,000$ x 15% = **Rs. 99,000/-**.

The Tribunal has allowed an amount of Rs. 5000/- for loss of income during treatment and recovery. Though the injured remained hospitalized for a period of five days but he suffered fracture of both bones of right leg and required medical intervention of fixing the fracture with interlocking nail. As the injured has been treated as a casual labour, he would have taken at least three months to recover from medical condition for resuming his work. Accordingly, the claimant is entitled to **Rs. 15,000/-** qua loss of income during the period of treatment and recovery. (additional amount of Rs. 10,000/-).

The Tribunal has awarded an amount of Rs. 17,000/- qua pain and suffering, special diet, attendant charges and transportation. Taking into consideration the nature of injuries sustained, coupled with the period of treatment and recovery, the claimant shall be entitled to an amount of **Rs. 25,000/-** under these heads. He is awarded **Rs. 10,000/-** for loss of amenities of

life in regard to disability suffered by him. An amount of **Rs. 11,882/-** qua treatment expenses allowed by the Tribunal is affirmed. In this manner, total compensation is Rs. 1,60,882/- (99,000 +15,000 + 25,000 + 10,000 + 11882) and the additional amount is **Rs. 80,800/-** (1,60,882 -80,082), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

17.4.2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No