IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 736 of 2014 (O&M)
Date of decision: 05.10.2018

Balbir Singh .... *Appellant*

Versus

Lal Singh and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Ms Monika Singh, Advocate
for the appellant

Mr. V K Garg, Advocate
for respondent No. 3

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Rekha Mittal, J. (Oral)

CM 2373 CII of 2014

Prayer in this application is for condoning delay of 557 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, the application is allowed and delay of 557 days in filing the appeal stands condoned subject to condition that in case the appellant succeeds in appeal, he will forgo interest for the period of delay.

Main case

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 06.05.2010.

The Tribunal has awarded compensation of Rs.3,23,000.00, detailed hereunder:-

Pain and sufferings and special diet	Rs.10,000.00
Stay in Hospital	Rs.6,000.00
Medical expenses	Rs.1,47,000.00
Disability	Rs.90,000.00
Loss of income	Rs.20,000.00
Loss of income	Rs.50,000.00

Counsel for the appellant would argue that the Tribunal has assessed income of the victim at Rs.10,000.00 per month but he was earning Rs.15,000.00 per month. The victim has suffered disability of 45% but the Tribunal has allowed meager amount of Rs.90,000.00 qua permanent disability. Compensation allowed for pain and sufferings and special diet is liable to be enhanced. He may be awarded compensation for services of an attendant, transportation charges etc.

Counsel for the insurance company, on the contrary, has supported assessment made by the Tribunal with the submission that the victim has been adequately compensated.

The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.1,47,000.00 on the basis of Bills of Rs.1,47,899.00. Another sum of Rs.6,000.00 has been allowed @ Rs.500.00 per day for hospitalization for about 12 days. In the circumstances, reimbursement allowed by the Tribunal is liable to be affirmed and ordered accordingly.

Dr. M S Ahluwalia, Medical Officer, Amar Hopsital, Patiala was examined and he produced discharged summary Ex. P3 to Ex.P5. He would state that medicines and procedures mentioned in Ex.P7 to Ex.P107 were required for treatment of the patient. In para 3 of his affidavit, Ex.PW4/A filed by way of examination-in-chief, he has deposed that following procedures were conducted on patient Balbir Singh:-

i) Open Reduction and Internal Fixation with DCP for fracture humerus right.

ii) Open Reduction and Internal Fixation with DCP for fracture femur right.

iii) Open Reduction and Internal Fixation with DHS for fracture neck femur.

iv) Reduction of fracture nasal bone and POP splint applied.

Further stated that patient was discharged from the Hospital on 18.05.2010 with advice of physiotherapy exercises.

Taking into consideration the nature of injuries sustained coupled with treatment given to the injured, he shall be entitle to Rs.25,000.00 for pain and sufferings. He is also awarded Rs.5,000.00 each for special diet, services of an attendant and transportation charges.

The Tribunal has awarded Rs.90,000.00 for disability and Rs.70,000.00 under two heads *i.e.* loss of income Rs.20,000.00 (at the rate of Rs.10,000.00 per month for a period of two months) and Rs.50,000.00 for loss of amenities of life. The plea of the injured is that he was doing business of Generator Production and repairs and running a Rubber industry thereby earning Rs.15,000.00 per month. He also produced Income Tax return Ex. P2 for the assessment year 2010-11. He did not produce any corroborative evidence to substantiate his plea that he was involved in business of Generator Production and repairs and running a Rubber industry. The Tribunal has rightly refused to rely upon Income Tax return Ex. P2 which was filed on 22.10.2010 whereas the accident took place on 06.05.2010. The claimant has not produced Income Tax return, if any, filed by him prior to Ex.P2. Perusal of Income Tax return would reveal that the same does not make reference to details and source of income of the victim. Under the circumstances, it can safely be held that Income Tax return was filed by the victim for the purpose of claiming higher compensation. In absence of the victim producing satisfactory evidence on record with regard to his avocation and income prior to the accident, taking a clue from the notification issued by the State of Haryana fixing minimum wages at the relevant time, income of the victim is assessed at Rs.5,000.00 per month. He shall be entitle to loss of income during the period of treatment and recovery for a period of two months i.e. Rs.10,000.00.

This brings the Court to entitlement of claimant for compensation in respect of disability suffered on account of sustaining injuries. Dr. R K Singla, SMO, General Hospital, Narwana (PW2) was examined to prove disability. He would state that Balbir Singh son of Gian Singh, resident of Prem Nagar, Narwana was assessed to have disability of about 45% due to shortening of right lower limb by two inches, stiff right knee, hip, shoulder, injury face intertrochanteric fracture right femur, shaft femur, right humerous and injury face. In his cross examination, he stated that stiffness of right knee, right hip and right shoulder has 10% disability each. The stiffness can reduce to some extent by physiotherapy and passage of time. However, he has not expressed any opinion as to how disability of 45% can be treated for assessing functional disability, keeping in view avocation of victim before the accident. Taking into consideration income of the victim assessed by treating him as a casual labour coupled with nature of disability suffered by him, I am of the considered opinion that functional disability would be taken to the tune of 30%. The claimant shall be entitle to loss of income qua disability by applying appropriate multiplier. The injured was 62 years old at the time of occurrence and multiplier of '7' is admissible in the circumstances.

In view of the above, loss of income qua disability is assessed at Rs.1,26,000.00 (Rs.4,20,000.00 *i.e.* Rs.5,000 x 12 x 7 x 30/100). The Tribunal has rightly allowed compensation for loss of amenities of life to the tune of Rs.50,000.00.

Total compensation is calculated at Rs.3,79,000.00 which is tabulated hereunder:-

Loss of future income qua disability	Rs.1,26,000.00
Pain and sufferings	Rs.25,000.00
Loss of income for a period of two months	Rs.10,000.00
Special diet	Rs.5,000.00
Charges for services of an attendant	Rs.5,000.00
Transportation charges	Rs.5,000.00
Medical Expenses	Rs.1,47,000.00
Loss of amenities of life	Rs.50,000.00
Stay in hospital	Rs.6,000.00

Additional amount is Rs.56,000.00 (Rs.3,79,000.00 – Rs.3,23,000.00) payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 557 days.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

05.10.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No