IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-817-2010(O&M)
Date of decision:-21.5.2019

Jai Bhagwan

...Appellant

Versus

Ram Kumar Bishua and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: None for the appellant.

Mr.R.C. Gupta, Advocate
for respondent No.3 – insurance company.

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H.S. MADAAN, J.

CM-4378-CII-2010

Petitioner/claimant Jai Bhagwan having suffered injuries in a motor vehicular accident, had brought a claim petition under Section 163-A of Motor Vehicles Act against the respondents i.e. Ram Kumar Bishua – driver, Mrs.Rekha Kumari Dhariwal – owner and United India Assurance Company – insurer of truck No.B/R No.AS-01-R-6976 (hereinafter referred to as the offending vehicle). The said claim petition was accepted by the Motor Accidents Claims Tribunal, Bhiwani. The petitioner-claimant was not satisfied with the compensation so awarded to him, therefore, he has approached this Court by way of filing an appeal. The appeal has been filed belatedly by 48 days. The instant application has been filed under Section 5 of the Limitation Act for condonation of 48 days in filing the appeal for the reason that such delay was not intentional or wilful but as a result of the communication gap between him and his counsel, therefore, the same be condoned.

Though the application is resisted by the counsel for the respondent but I find that the reasoning given in the application is plausible and satisfactory. Even otherwise, the appellant/claimant is not going to gain anything by delay in filing of the appeal. Furthermore, it is always better to decide a *lis* on merits rather than non-suiting a party on technical grounds. Therefore, the application is allowed and delay of 48 days in filing of the appeal stands condoned.

FAO-817-2010

Briefly stated, facts of the case as per version of the petitioner/claimant are that on 6.6.2004 at about 7:00 p.m., he was travelling in the offending vehicle, which met with an accident at Phaibawk, which is about 10 kms. from Seling by rolling down in a gorge to the extent of 70 meter; that the claimant besides two other persons travelling in the offending truck suffered injuries; that the truck in question was also damaged so were the goods being transported therein; that some costly articles went missing; that after spot verification, the cause of accident was found to road being slippery; that the truck driver was not found to be at fault; that FIR GDE No.184 dated 7.6.2004 was registered at Police Station Aizawl (Mizoram); that as a result of suffering injuries, the petitioner has become permanently disabled. According to him, the accident was caused solely due to road being slippery due to heavy rains, while petitioner/claimant was on duty on the truck in question as conductor/handleman.

Petitioner – claimant – had filed a petition under Section 163-A of Motor Vehicles Act, 1988 against the abovesaid respondents, claiming compensation to the tune of Rs.12 lacs.

On notice only respondents No.2 and 3 appeared and filed separate written statements, whereas respondent No.1 had not appeared despite service and he was proceeded against ex-parte.

In the written statement filed on behalf of respondent No.2, the contentions in the claim petition were contested submitting that the petition was not legally maintainable. The answering respondent admitted herself to be owner of the truck stating that it was duly insured with United India Assurance Company, Bhiwani; that at the time of accident, the driver of the answering respondent i.e. respondent No.1 – Ram Kumar Bishua was driving it with valid driving licence and compensation, if any, is to be paid by the insurance company – respondent No.3. In the end, such respondent prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3 – insurance company, it raked up various legal objections challenging the maintainability of the claim petition; jurisdiction of the Tribunal to entertain and try the petition in question; locus standi of the claimant to bring the claim petition alleging that it was a result of collusion between him and other respondent; that as a matter of fact the truck in question was being driven under the control and authority of the owner and respondent No.1 was not holding a valid and effective driving licence; that the claimant was travelling in the said truck in violation of the provisions and terms and conditions of the Motor Vehicles Act and of insurance policy and was a paid passenger. Refuting the remaining allegations, such respondent also prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether the accident which occurred on 6.6.2004, caused due to involvement of vehicle bearing no.B/R No.AS-0l-R-6976, driven by respondent No.1, causing injuries to Jai Bhagwan, as alleged? OPP .
2. lf issue No.1 is proved. whether petitioner is entitled for compensation, if so, to what amount and from whom? OP Parties.
3. Whether the petition is not maintainable in the present form? OPR.
4. Whether the petitioner has no locus standi and cause of action to file the petition? OPR.
5. Whether the claim petition is bad on account of mis-joinder and non-joinder of necessary parties? OPR
6. Whether the insured has violated the terms and conditions of insurance policy, if so, to what effect? OPR
7. Whether the driver of the offending vehicle was not holding the valid driving licence on the date of accident? OPR
8. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the claimant got recorded his statement as PW1 besides examining Dr.T.S. Bagri as PW2, Sh. Partap Singh as PW3, Sh.Shyam Sunder as PW4 and Smt.Amit Kumar, Advocate as PW5.

On the other hand, respondents tendered in evidence documents i.e. copy of letter No.DO-II/MOT/CL/199 dated 6.10.2005 as Ex.R1, copy of letter No.RD/CC/MACT/05dated 1.9.2005 as Ex.R2, affidavit of Smt.Rekha Dhariwal as Ex.R3, insurance policy as Ex.R4, questionnaire from as Ex.P5, verification report of driving licence of Ram Kumar Biswa as Ex.R6, copy of letter No.184 dated 7.6.2004 as Mark R1 and copy of driving licence as Mark R2. No.6 tendered in evidence insurance policy as Ex.R1.

After hearing arguments, the Tribunal decided issue No.1 in in favour of the petitioner, issue No.2 in favour of the petitioner, issues No.3 and 4 in favour of the petitioner and against the respondents, issue No.5 against the respondents being not pressed, issues No.6 and 7 against respondent No.3 – insurance company. Resultantly, while accepting the claim petition partly vide Award dated 9.5.2009, the Tribunal awarded compensation of Rs.4,00,000/- to the petitioner/claimant payable by all the respondents jointly and severally along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

This award left the claimant aggrieved and he has approached this Court by filing the present appeal seeking enhancement of the compensation.

Notice of the appeal was given to respondent. Respondent No.3 – insurance company appeared through counsel.

I have heard learned counsel for the respondent No.3 besides going through the record.

It transpires from the record that the appellant/claimant had suffered fracture on both the legs and his nervous system below belt portion has been completely blocked. The permanent disability assessed to be 88% and he has become inactive. At the time of accident, the claimant was stated to be aged about 30 years earning Rs.3,000/- per month. The Tribunal has awarded compensation of Rs.4 lacs to him, which include Rs.5,000/- towards grievous injuries and Rs.15,000/- towards loss of income on account of permanent total disablement by adopting multiplier of 12 on annual loss of income of Rs.31,680/-.

As per structured formula for awarding compensation under Section 163-A of the Act multiplier of 18 should have been applied as is mentioned in the second schedule of Section 163-A of the Motor Vehicles Act. Doing that the compensation comes out to Rs.5,70,240/-(31,680 x 18).

The claimant is entitled to Rs.5,000/- on account of pain and suffering. Thus, the compensation comes out to Rs.5,75,240/-.

The claimant has placed on record various bills Ex.P6 to Ex.P9 and Mark A as well as Ex.P10 to Ex.P15. The Tribunal has not taken into view the fact that many a times, the record of various amount spent on purchase of medicines etc. are not kept. Thus, I award a sum of Rs.15,000/- under that head. The compensation comes out to Rs.5,90,240/-.

On account of loss of income not exceeding 52 months i.e. Rs.3,000/- per month for 52 weeks (13 months). Doing that the compensation comes out to Rs.39,000/- (3,000 x 13).

The total compensation comes out to Rs.6,29,240/-(5,90,240

+ 39,000).

The Tribunal has awarded compensation of Rs.4,00,000/-.

In this way, the enhanced amount comes out to Rs.2,29,240/- (6,29,240 - 4,00,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,29,240/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

21.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No