202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1106 of 2014 (O&M)
Date of Decision: 30.08.2019

DALBIR SINGH ......Appellant

Vs

DHARAM SINGH & ORS ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Krishan Singh, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent No.3-Insurance Company.

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RAJ MOHAN SINGH, J. (Oral)

CM Nos.3638-CII and 3639-CII of 2014

There is a delay of 296 days in refiling and 1983 days in filing of the appeal by the claimants.

Notice was issued in both the applications vide order dated 19.11.2015.

At that stage, learned counsel appeared on behalf of respondent No.3 and sought time to file reply to the aforesaid applications. Thereafter the case was adjourned on number of occasions, but the reply has not been filed.

At this stage, learned counsel for respondent No.3

states that in the application itself no sufficient ground is made out to condone the delay in filing the appeal.

After hearing learned counsel for the parties, it would be just and appropriate to condone the delay in re-filing and filing the appeal by curtailing the entitlement of the appellants towards interest (if any) granted by the Court on enhanced amount for the period in question.

Application stands disposed of.

Main case

[1]. Injured/claimant namely Dalbir Singh has preferred this appeal for enhancement of compensation awarded vide award dated 08.02.2007 passed by the Motor Accident Claims Tribunal, Jagadhri (hereinafter to be referred as 'the Tribunal').

[2]. Brief facts are that the accident took place on 03.03.2002 when the appellant along with others was going from village Kheri Pahalwanki, District Kurukshetra to Yamuna Nagar in a maruti car. The car was being driven by Jagpal Singh. At about 7.30 p.m. the accident took place within the area of village Kanjnu near Pinki Vaishno Dhabha on Kurukshetra Yamuna Nagar Road with truck bearing regn. no.HR-46A-7318 (hereinafter to be called as the offending vehicle). The claimant/appellant received multiple grievous injuries including fracture of right femur at two places, right arm

below elbow and spinal cord. He was hospitalized and thereafter he was shifted to INSCOL Hospital, Sector 34-A, Chandigarh.

[3]. As per the case set up by the appellant, he was a mason i.e. a skilled labourer and was earning Rs.6,000/- per month.

[4]. The Tribunal has found that the accident took place on account of negligence on the part of the driver of the offending truck and the claimant injured was held entitled for compensation. The vehicle was found to be duly insured. The Tribunal awarded an amount of Rs.69,000/- under different heads.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. As per medical evidence on record, the injured appellant suffered 20% permanent disability of a particular limb. The functional disability *qua* the whole body can be taken to be 10%. No definite evidence for income has come forth on record. In case of accident, some guess work has to be done for assessing the income of the deceased in view of the fact that the Motor Vehicle Act is a welfare legislation. Even if the income of the deceased is assessed to be on daily wage basis, in the year 2002, the same would come out to be approximately

Rs.2000/- per month. In case of permanent disability, the compensation towards permanent disability as well as loss of earning capacity on account of disability have to be assessed independently. Firstly, for disfigurement of the body, the method of granting Rs.2000/- per percentage would be just and appropriate, which has to be qua the exact percentage of permanent disability qua the limbs. Since the claimant has 20% disability *qua* his limbs, therefore, the grant of compensation under the first component would come out to be Rs.40,000/- under the category of permanent disability.

[7]. Secondly loss of income on account of permanent disability is also to be assessed in view of ratio laid down by the Hon'ble Apex Court in ***Govind Yadav vs New India Insurance Company Limited, 2011 (4) RCR (Civil) 817; S. Manickam vs. Metropolitan Transport Corporation Ltd., 2013(3) R.C.R.(Civil) 696; K. Suresh vs New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312; G. Ravindranath @ R. Chowdary vs E. Srinivas and another, 2013(3) RCR (Civil) 934; Rekha Jain vs National InsuranceCompany Limited, 2013(3) RCR (Civil) 996; Neerupam Mohan Mathur vs New India Assurance Company, 2013(4) Law Herald (SC) 3422*** and ***Yadava Kumar vs The Divisional Manager, National Insurance Company***

Limited and another, 2010(4) RCR (Civil) 155,. For second consideration, the income of the deceased even on the basis of daily wage would come out to be Rs.2000/- per month. The disability to the extent of 10% can be assessed towards functional disability qua the whole body. Loss of earning of Rs.200/- per month i.e. Rs.2400/- per annum can be assessed. Keeping in view the age of the injured, multiplier of 14 would be just and appropriate. In this way an amount of Rs.33,600/- (2400 x 14) can be assessed under second component of loss of future income on account of permanent disability. In this way, the total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.73,600/- (40,000 + 33,600).

[8]. Keeping in view the hospitalization and the expenses towards treatment taken by the injured/appellant, an amount of Rs.20,000/- can be assessed towards pain and sufferings and a consolidated amount of Rs.10,000/- can be assessed towards special diet and transportation charges. An amount of Rs.5,000/- towards attendant charges can be assessed. In this manner manner, the total amount of compensation would come out to be Rs.1,08,600/- (73,600 + 20,000 + 10,000 + 5,000).

[9]. In this way the total amount of enhanced compensation

would come out to be Rs.39,600/- (1,08,600 – 69,000). The enhanced amount would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the same. The interest for the period of delay i.e. 1983 days shall be deducted by the executing Court while answering the execution.

[10]. In view of aforesaid, the award is modified. Appeal stands disposed of.

August 30, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No