

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

CM No. 19696 CII of 2015 in/and
FAO No. 6229 of 2015 (O&M)
Date of Decision: 4.9.2019

Umesh Kumar

...Appellant

Versus

Mahabir and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vivek Suri, Advocate
for the appellant.

None for respondent No.3.

Mr. R.K. Bishamboo, Advocate,
for respondent No. 7.

JAISHREE THAKUR, J.

CM No. 19696 CII of 2015

This is an application that has been filed for condonation of 104 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

1. This is an appeal that has been filed seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Rohtak, on account of the injuries suffered by the appellant in a road accident.

2. In brief, facts are that the appellant was travelling in a maxi cab

bearing registration No. HR-61-8586, when a tractor trolley bearing registration No. HR-16H-9831 collided with the maxi cab and due to the impact of the accident the driver and other occupants including the appellant sustained multiple grievous injuries. Both the vehicles were being driven in a rash and a negligent manner, which led to an FIR No 147 dated 1.3.2011 under Sections 279/337 IPC, being registered at Police Station, Rohtak. The Tribunal awarded a sum of ₹1,20,000/- as compensation to the appellant on account of the injuries suffered by him in the accident. Aggrieved the inadequate amount of compensation, the instant appeal has been filed.

3. Mr. Vivek Suri, learned counsel appearing on behalf of the appellant, contends that due to the injuries suffered by the appellant, he remained admitted in PGIMS, Rohtak from 28.2.2011 till 15.4.2011 and thereafter had to take follow-up treatment as an outdoor patient. In fact, he had spent about ₹1 lakh on his treatment and medical bills and the Tribunal only awarded a sum of ₹35,000/- towards the treatment expenses as well as transportation charges. The amount of compensation as awarded of ₹35,000/- towards pain and suffering was also wholly inadequate since the appellant remained in hospital for more than 45 days. It was further contended that the appellant had suffered permanent disability on account of the mal-united fracture of his right side and, therefore, his earning capacity had diminished. It was contended that he was a tailor and found it difficult to sit on the floor. It was further argued that it had come in evidence of DW4 Dr. Nitin Kumar Gupta that due to passage of time there would be arthritic changes in his right hip which factor has not been taken into account.

4. Per Contra, Mr R.K. Bishamboo, learned counsel appearing on behalf of the Insurance Company—respondent No. 7 pleads that adequate compensation has already been allowed to the appellant by the Tribunal and, therefore, there is no occasion for enhancement of the same.

5. I have heard the learned counsel for the parties and with their assistance have perused the pleadings and the evidence.

6. The factum of the accident is not disputed since no appeal has been preferred either by the driver/owner of the offending vehicle or by the Insurance Company. The Tribunal allowed compensation of ₹1,20,000/- to be paid to the appellant by holding that there was contributory negligence of both the drivers of the offending vehicle involved in the accident .

7. In the judgment rendered in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343***, the Supreme Court has held that before compensation can be awarded the Tribunal must decide whether there is any permanent disability and if so the extent of such permanent disability. Meaning thereby, evidence has be to be considered (i) whether the disablement is permanent or temporary; (ii) if the disability is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. It was also held that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. In the instant case, the claimant was working as a tailor and had suffered 25% permanent disability

at his right hip joint. The disability has been proved on the record through Ex. P-3, namely the MLR showing the extent of his injuries and the statement of the doctor who opined that the appellant had suffered 25% permanent disability on account of the accident. Interestingly enough, both the Insurance Company and the driver of the offending vehicles did not lead any evidence to dispute the fact of the accident or the nature of the injuries suffered by the appellant. As per the case of the appellant, he was working as a tailor and, therefore, could not continue with his job. In the opinion of the court, the nature of the injuries suffered by the appellant would not hamper him in continuing with the work of a tailor and, therefore, there is no occasion to increase compensation on that account. However, there is inadequate compensation awarded to him as per the ratio of the judgment, referred to above.

8. In view of the above and as per the dictum that has been stipulated in ***Raj Kumar*** case (supra), the calculation for compensation in the instant case would be as follows :-

(a) Medical Expenses	:	₹35,000/-
(b) Attendance charges	:	₹8,000/-
(c) Special diet	:	₹10,000/-
(d) Transportation	:	₹10,000/-
(e) Pain and suffering	:	₹50,000/-
(f) Permanent disability	:	₹50,000 /-
(g) Loss of income	:	₹6000/- per month for 6 months = ₹36,000 /-.
Total	:	₹1,99,000/-

9. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹1,20,000/- to ₹1,99,000/-.

10. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellant with interest @ 7.5% per annum from the date of the petition till realization. However, the appellant would not be entitled to seek interest for the days that there was a delay in filing of the appeal.

11. The appeal is allowed in the aforesaid terms.

4.9.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No