

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

FAO-8383-2015(O&M)

Date of decision:-27.8.2019

Vikash

...Appellant

Versus

Rajender Kumar and others

...Respondents

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

Present: Mr.Rajesh Lamba, Advocate
for the appellant.

Mr.Tarun Yadav, Advocate
for respondents No.1 and 2.

Mr.Naveen Chopra, Advocate
for respondent No.3.

H.S. MADAAN, J.

CM-26450-CII-2015

This is an application under Section 5 of the Limitation Act
for condonation of delay of 154 days in filing of the appeal.

Heard.

Though, the request is being opposed on behalf of the
respondents but I find sufficient grounds to condone the delay since it is
always desirable to decide a *lis* on merits rather than non suiting a party
on a technical ground. Therefore, the application is allowed and delay of
154 days in filing of the appeal stands condoned.

FAO-8383-2015

Briefly stated, facts of the case are that on 10.6.2013 at about 12:30 p.m., Harish aged about 19 years son of Sh.Fateh Singh along with Vikash aged about 25 years son of Sh.Veer Bhan Lather, both residents of village Badshahpur, Gurgaon were going to petrol pump for getting fuel filled in Swift Dezire car bearing registration No.HR26-AZ-6305; that when they were at a little distance short of Toll Tax Badshahpur, then respondent No.2 Sudeshwar Paswan driving TATA Truck bearing registration No.DL-1M-2014 (hereinafter referred to as the offending vehicle) in a rash and negligent manner turned it abruptly from left hand side of the road towards right hand side without observing the traffic of the road, resultantly, the Swift car struck front portion on driver side of the offending vehicle, resulting in causing injuries to Harish and Vikash, occupants of the car; that the car was also damaged; that after mishap, Sudeshwar Paswan ran away from the spot leaving the offending vehicle behind; that both the injured were removed to Ekta Hospital, Badshahpur, where they were admitted and treated; that an FIR No.209 dated 11.6.2013 for the offences under Sections 279, 337, 427 IPC was registered at Police Station Badshahpur against respondent No.2 on the statement of claimant Harish.

Both the petitioners had filed separate claim petitions. Since both the claim petitions arose out of the same accident, those were consolidated and tried together by Motor Accidents Claims Tribunal, Gurgaon.

According to the case of petitioner Harish, he remained

admitted in Ekta Hospital, Badshahpur from 10.6.2013 to 13.6.2013; he had spent Rs.2 lakhs on his treatment, medicines, special diet and transportation etc.; that at the time of accident, he was aged about 19 years and was a student and he was giving tuitions and earning Rs.10,000/- per month and on account of injuries received in the accident, he had suffered permanent disability. He claimed compensation of Rs.15 lakhs along with interest @ 18% per annum.

Whereas according to the case of Vikash, he had suffered multiple grievous injuries on various parts of his body and fracture in both legs and his teeth were broken; he remained admitted in Ekta Hospital, Badshahpur from 10.6.2013 to 23.6.2013 and a sum of Rs.6 lakhs was spent by him on his treatment, medicines, special diet and transportation etc.; that he was aged about 25 years and was earning Rs.20,000/- by practising as an Advocate; that as a result of suffering of injuries in the road accident, he has suffered permanent disability and his life has been spoiled. He claimed a sum of Rs.20 lakhs along with interest.

On notice, all the three respondents had appeared. Respondents No.1 and 2 had filed a joint written statement in both the claim petitions whereas respondent No.3 filed separate written statement in both petitions.

In the joint written statements filed on behalf of respondents No.1 and 2, they have raised various legal objections on merits denying the material assertions whereas praying for dismissal of the claim petitions.

In the written statements filed by respondent No.3 –

insurance company, it also raked up preliminary objections with regard to maintainability of the claim petitions, locus standi of the petitioners to bring the same; cause of action having arisen to petitioners to file the claim petitions, further coming up with a plea that respondent No.2 was not having a valid and effective driving licence at the time of accident and that terms and conditions of the insurance policy were violated. On merits, material assertions in the claim petitions were denied.

All the respondents prayed for dismissal of the claim petitions.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 26.2.2015. Petitioner Harish, who had filed MACT Petition No.34 of 27.11.2013 was awarded compensation of Rs.85,000/- and petitioner Vikash, who had filed MACT Petition No.32 of 27.11.2013 was awarded compensation of Rs.3,02,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petitions till final realization payable by respondents No.1 to 3.

However, petitioner Vikash, who had filed MACT Petition No.32 of 27.11.201 was dissatisfied with the compensation awarded to him and he has filed the present appeal before this Court seeking enhancement of compensation.

Notice of the appeal was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going

through the record.

The Tribunal has awarded compensation to the petitioner Vikash as per details below:

Sr.No.	Heads of Claim	Amount
1.	Hospitalization, pain & suffering and fracture	Rs.65,000/-
2.	Attendant Charges	Rs.5,000/-
3.	Special diet	Rs.10,000/-
4.	Loss of income	Rs.10,000/-
5.	Medical expenses incurred on medicines etc.	Rs.2,02,000/-
6.	Permanent disability	Rs.10,000/-
	Total	Rs.3,02,000/-

The petitioner Vikash getting his statement recorded as PW1 has deposed that as a result of suffering injuries in the accident, his left leg and left arm were fractured, his teeth and jaw were broken; he got replaced ten teeth and suffered permanent scars on his face; that a rod was planted in his left leg; that he remained admitted in Ekta Hospital from 10.6.2013 to 23.6.2013 incurring expenditure of Rs.6 lakhs; that prior to the accident, he was practising as a Advocate earning Rs.30,000/ per month but due to the injuries, he could not pursue his career; that marital prospects have also been effected. PW3 Dr.T.S. Bikal had provided the medical evidence proving MLR of the injured as Ex.P1 stating that he had suffered lacerated wound on chin region and bleeding from oral cavity; that lacerated wound was present on both forearm and tenderness was there on left leg; that the patient was operated for fracture of tibia left leg and remained admitted in their hospital from 10.6.2013 to 23.6.2013.

The Tribunal has awarded a consolidated sum of Rs.65,000/-

on account of hospitalization, pain and suffering and fracture, which in my considered view is on lower side.

In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.30,000/-** under the head pain and suffering.

Further, the Tribunal has awarded a sum of Rs.5,000/- on account of attendant charges. Keeping in view the nature and extent of injuries suffered by the petitioner Vikash, the period of his hospitalization and considering the fact that he would have been require to go to hospital for follow up treatment also, I find this amount to be on lower side. The same is accordingly enhanced to **Rs.15,000/-**.

Similarly, the amount of Rs.10,000/- granted by the Tribunal as special diet requires enhancement considering the fact that the petitioner Vikash had suffered injury in his jaw and hadlost several teeth. Such type of patients require special type of diet. The amount awarded is thus enhanced to **Rs.20,000/-**.

The amount awarded as Rs.10,000/- towards loss of income is on the lower side. The amount deserves to be enhanced and it is increased to **Rs.30,000/-**.

It needs to be mentioned here that the Tribunal has denied payment of Rs.55,000/- to the claimant rejecting receipt Ex.P42 dated 7.10.2013 for Rs.55,000/- for dental treatment for the reason that accident

is dated 10.6.2013, whereas receipt is dated 7.10.2013 and there is no treatment record for dental injuries for the intervening period and further PW3 Dr.T.S. Bikal has not stated anything about the dental injuries though he has stated only with regard to bleeding from oral cavity. However, the Tribunal was not justified in doing so. There is nothing to show that this receipt was a document of suspicious nature. The bleeding from oral cavity is suggestive of damage to the teeth. It is specific case of the claimant that his teeth got damaged as a result of suffering injuries in the accident and he had got his 10 teeth replaced. It was not proper and appropriate on the part of the Tribunal to reject this receipt without any cogent or convincing reason. The justification given for rejection of the receipt is not convincing. Therefore, the amount of Rs.55,000/- deserves to be added to the total amount of medical expenses, which had been worked out by the Tribunal to the tune of Rs.2,02,000/-. In that way, the amount comes out to Rs.2,57,000/-. The Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.2,65,000/-** .

No amount has been awarded towards further medical treatment. The petitioner/claimant Vikash needs to be compensated for future medical treatment. A sum of **Rs.15,000/-** is awarded to him for that purpose.

The Tribunal has awarded a sum of Rs.10,000/- to the

claimant on account of permanent disability. The Apex Court in judgment *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396* has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability up to 10%, Rs.1 lakh is to be awarded besides some more compensation under different heads. However, in this case the disability is not with regard to the entire and is with regard to left leg only body, nevertheless I find that compensation of Rs.10,000/- awarded is on the lower side and it needs to be enhanced. Therefore, a compensation of **Rs.30,000/-** is awarded on account of permanent disability.

No amount has been awarded to the claimant Vikash on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- each (total **Rs.50,000/-**) is awarded to him under that heads.

With such type of injury, the appellant/claimant may not be able to find a suitable life partner and lead life of a normal human being and his marital prospects have been affected. Thus, I award a sum of **Rs.30,000/-** under that head to the claimant.

The total compensation comes out to Rs.4,85,000/-.

In this way, the enhanced amount comes out to Rs.1,83,000/- (4,85,000 - 3,02,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization.

The other terms and conditions given in the award shall apply to the

enhanced amount as well.

With such modification, the appeal is allowed.

27.8.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No