

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

-.-

FAO 5317 of 2015 (O&M)

Date of decision: 22.11.2019

Sandeep

.....Appellant

Versus

Jai Singh and others

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Arvind Kumar Yadav, Advocate
for the appellant

Mr. R C Kapoor, Advocate
for respondent No. 3

-.-

Rekha Mittal, J. (Oral)

CM 16426 CII of 2019

Allowed as prayed for. Annexures A-1 and A-2 are taken on
record subject to just exceptions.

CM 16738 CII of 2015

Prayer in this application is for condonation of delay of 222
days in filing the appeal.

Heard.

In view of averments made in the application supported by
affidavit of the applicant, the application is allowed and delay of 222 days
in filing the appeal stands condoned, subject to condition that in case the
appellant succeeds in appeal, he will forego interest for the period of delay.

The application stands disposed of.

Main case

The appellant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 07.09.2012.

The Tribunal assessed compensation of Rs.2,42,564/-, detailed hereunder:-

-Pain and suffering	Rs.10,000/-
-Medical expenses	Rs.2,27,564/-
-Special diet/attendant/ transportation charges	Rs.5,000/-

However, the claimant has been paid Rs.1,21,282/- as 50% negligence has been attributed to the victim.

Counsel for the appellant would argue that findings of the Tribunal attributing 50% negligence to the victim are not well founded and result of failure of Tribunal to appreciate testimony of injured Sandeep and contents of FIR, lodged at the behest of Satbir. It is further argued that driver of offending vehicle i.e. Dumper No. HR 55M 2022 did not appear in the witness box and an adverse inference is liable to be drawn against the respondents before the Tribunal. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court *Archit Saini and another vs Oriental Insurance Company Limited and others, 2018 (5) R.C.R. (Civil) 80.*

It is further argued that the injured remained hospitalized for a period of twenty days but the Tribunal has allowed a paltry sum of Rs.10,000/- for pain and suffering, Rs.5,000/- for special

diet/attendant/transportation charges. He would inform that the appellant has filed an application for additional evidence to place on record disability certificate dated 20.08.2014 issued after decision by the Tribunal. He would pray that adequate compensation may be allowed in respect of disability, loss of amenities of life and matrimonial prospects.

Counsel representing the insurance company, on the contrary, has supported findings of Tribunal on issue No. 1 attributing negligence to the victim to the tune of 50%. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court ***Raj Rani and others vs Oriental Insurance Company Limited and others, 2009 ACJ 2003***. He has also supported assessment of compensation by the Tribunal.

I have heard counsel for the parties, perused the paper book particularly the award and testimony of Sandeep as well as FIR.

The plea of claimant is that accident took place on 07.09.2012 at about 7.15 p.m. as the offending vehicle was parked in middle of the road without any indicator and he could not notice the standing Dumper because of darkness and reflection of lights of other vehicles. Claimant- Sandeep appeared in the witness box and reiterated his version given in claim application as well as first information report lodged at the behest of Satbir, his uncle examined as PW2.

Counsel for the parties, in response to a query, expressed their inability to inform about time of sun set on 07.09.2012. However, as per information available on the internet, time of sun set on that day was 06.30 p.m.. Counsel for the respondent has failed to point out any fact elicited in cross examination of Sandeep to reject his testimony that offending vehicle

was parked in middle of the road and he could not spot the standing dumper due to darkness and reflection of lights of other vehicles. Admittedly, driver of offending vehicle did not appear in the witness box to counter case of the claimant and testimonies of Sandeep and Satbir. In the given scenario, there is nothing on record to discard or disbelieve testimony of Sandeep as to the circumstances under which the occurrence in question took place. That being so, the respondent cannot derive any advantage to his contention from the judgment of Hon'ble the Supreme Court in *Raj Rani's* case (supra), decided in view of peculiar facts and circumstances of that case. In this view of the matter, findings of the Tribunal attributing contributory negligence to the victim cannot be allowed to sustain and accordingly set aside.

This brings the Court to quantum of compensation assessed in the case. The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.2,27,564/- and the same is affirmed. The injured remained hospitalized for a period of about twenty days. He sustained four injuries, reflected in the medico legal report Ex.P3. Taking into consideration period of hospitalization, the claimant is allowed additional amount of Rs.10,000/- for pain and sufferings, special diet/attendant/transportation charges.

The appellant has produced disability certificate issued by the Medical Board of General Hospital, Rewari. As per disability assessed, he had post trauma mild restricted movement of hip joint 5% mild loss of stability and pain 3%, making total disability to the tune of 8%. The victim was 23 years of old in the year 2014. There is no evidence that victim suffered loss of income either during period of treatment and recovery or

future loss of income due to disability. The appellant is awarded Rs.16,000/- qua disability @ Rs.2,000 per per cent. He is awarded Rs.30,000/- for loss of amenities of life and matrimonial prospects. The additional sum of Rs.1,77,282/- (1,21,282 + 10,000 + 16,000 + 30,000) is payable with interest @ 7.5% from the date of petition till realization except for a period of delay of 222 days in filling the appeal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

22.11.2019
Mohan Bimbra

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