

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-2203-2019 (O&M)

Date of decision: 17.02.2023

Sunil Kumar

...Appellant(s)

Vs.

Chand Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Digvijay, Advocate for
Mr. Pawan Kumar Hooda, Advocate for the appellant.

NIDHI GUPTA, J.

CM-6715-CII-2019

This is an application under Section 5 of the Limitation Act for condonation of delay of 24 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-6721-CII-2019

This is an application under Section 151 CPC seeking exemption from filing typed copy of Award dated 02.11.2018.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.14,09,482/- awarded by

Motor Accident Claims Tribunal, Panipat (hereinafter referred to as "the

learned Tribunal”) vide Award dated 02.11.2018 passed in MACP Case No.134 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that claimant/appellant had suffered injuries in a motor vehicular accident that took place on 31.10.2015 as canter bearing registration No.HR-67-4049 (hereinafter referred to as “the offending vehicle”) was stationed on road without indicator or reflector. Respondent No.1 is the driver and owner, and respondent No.3 is the insurer of the offending vehicle. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia, on the ground;

a) that at the time of accident, appellant was 35 years of age and employed in Ayushman Bhav Hospital, Village Siwah, G.T. Road, Panipat and drawing salary of Rs.10,000/- per month. It is submitted that however, as a result of the accident, appellant sustained fracture of left arm, and injuries on face, as also his left eye was completely damaged. It is submitted that the appellant remained admitted in Medanta Hospital, Gurugram from 01.11.2015 to 10.11.2015, whereafter he was shifted to Oscar Hospital, Rohtak where he remained admitted from 12.11.2015 to 26.11.2015 and he spent a sum of Rs.35,00,000/- on his treatment and had therefore, filed claim petition seeking a sum of Rs.1 crore along with

interest at the rate of 18% per annum on account of injuries suffered by him. It is also submitted that appellant had even suffered permanent disability of 38% as he had to get an artificial eye. It is submitted that despite above facts, learned Tribunal has awarded a sum of Rs.60,000/- only on account of permanent disability which should have been at least Rs.2,00,000/-;

b) that Rs.10,000/- granted towards transportation expenses is also on lower side which should have been enhanced to Rs.50,000/-;

c) that Rs.25,000/- granted towards special diet should also be enhanced to Rs.50,000/-;

d) that Rs.50,000/- granted towards pain and suffering is inadvertent and the same should be enhanced to Rs.2,00,000/-;

e) that rate of interest of 7.5% should also be enhanced to 12% per annum;

f) that nothing has been granted by way of future treatment, attendant charges or loss of income.

4. No other argument is raised on behalf of the appellant.
5. I have heard learned counsel for the appellant.
6. Learned Tribunal has awarded compensation in following manner:-

Sr.No.	Head	Amount
1.	Compensation on account of expenditure incurred on medicine	Rs.12,64,484/-

	and treatment	
2.	Compensation on account of pain and suffering	Rs.50,000/-
3.	Compensation on account of nutritious diet	Rs.25,000/-
4.	Compensation on account of transportation charges	Rs.10,000/-
5.	Compensation on account of permanent disability	Rs.60,000/-
6.	Total	Rs.14,09,482/-

7. Perusal of record of the case shows that as per testimony of PW3 Dr. Ashutosh Mittal, Medical Officer, Civil Hospital, Panipat, the appellant had suffered permanent disability of 30% on account of artificial eye implant. This fact is also proven from disability certificate (Exhibit P8). Further, PW10 Subhash Sharma, IT Head of Ayushman Bhav Hospital, Panipat has admitted in his cross-examination that the appellant is still working in the Hospital. The Tribunal has thus, rightly held that earning capacity of the appellant has not been adversely affected. For this reason, learned Tribunal has held that disability of the appellant is not functional disability, and awarded a sum of Rs.60,000/- @ Rs. 2000/- per percent of disability, taking disability of the appellant as 30%.

8. Amount of Rs.12,64,484/- was granted to the appellant on basis of bills produced by him in respect of expenses incurred for his treatment. Nothing was granted towards loss of earning as no record of employment of appellant in said Hospital or salary drawn by him was placed on record. Except oral testimony of PW10 there was no other evidence to prove employment of the appellant. No record/evidence in form of letter of appointment, attendance register, salary certificate/accounts register showing disbursement of salary etc. was

produced in support. As such, I find no error in the findings returned by the learned Tribunal. Even now, learned counsel for the appellant is unable to show any loss of income, or that he has undergone any future treatment or that he had to employ a special attendant. Further, in my view, amounts granted under the other heads are just and fair in the facts and circumstances of the present case.

9. In view of the facts as noticed above, which the learned counsel for the appellant is unable to controvert, I find the Award to be just and fair in the facts and circumstances of the case. Accordingly present appeal stands dismissed.

10. Pending application(s) if any also stand(s) disposed of.

17.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No