

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

FAO 1533/2021 (O&M)

Date of decision: 25.01.2023

Ram Kumar

.....Appellant.

Vs.

Sanjay Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ram Karan Agnihotri, Advocate for the appellant.

Nidhi Gupta, J.

CM 10150-CII/2021

Since there is delay of 54 days in filing the present appeal, aforesaid application has been filed seeking condonation of said delay. The application is supported by an affidavit of the appellant, wherein the delay caused in filing the present appeal has been satisfactorily explained. Accordingly, the application is allowed and delay in filing the appeal is condoned.

Main Appeal.

Present appeal has been filed by the injured claimant seeking enhancement of compensation of Rs.2,37,108/- awarded by Motor Accident Claims Tribunal, Karnal (hereafter referred to as 'the Tribunal') vide Award dated 6.2.2020 passed in MACT/32/2019 in a petition u/s 166 and 140 of the Motor Vehicles Act, 1988.

The Id. Tribunal upon appraisal of the pleadings and evidence placed before it concluded that the appellant had suffered injuries in the motor vehicular accident that took place on 28.7.2018 due to the rash and negligent driving of car bearing registration No. HR-41-D-4978 (for short 'the offending vehicle') being driven by respondent No. 1.

It is submitted by the learned counsel for the appellant that at the time of accident, the appellant was 54 years of age and was working as Security Guard with Beri Udhyog Private Limited and earning Rs.14,518/- per month. It is submitted that in the accident in question appellant had suffered 25% disability on account of multiple rib fracture of left ribs and after the accident he is completely bed ridden. It is submitted that the appellant is still recovering from the said injuries and has, therefore, had to leave his job. It is submitted that nothing has been granted by the leaned Tribunal towards future treatment.

Heard Ld. Counsel for the appellant.

Perusal of the record of the case/impugned Award shows that as per testimony of PW3 Dr. Saurabh Gupta, who proved Disability Certificate Ex. P4, it has been categorically recorded therein that the appellant has suffered 25% disability on account of multiple rib fracture of left lower ribs with pain and weakness in chest and left upper limbs. It has further been recorded that the said disability is temporary in nature and is likely to improve. As per statement of PW3 Dr. Saurabh Gupta the disability of the appellant may improve upto 100%. Even the treating doctor, Dr. Aseem Trikha PW2 in his cross-examination has stated that the appellant required bed rest for 2–3 months. It is in therefore, clear that the appellant has not suffered any permanent disability. Moreover, appellant has produced no evidence even now, in support of his claim that he is bedridden after the accident in question.

The record further reveals that the appellant had produced PW4- Sachin Kumar, Executive HR Department from Beri Udhyog Private Limited who had filed the Pay Slip of the appellant as Ex.P5 depicting the monthly salary of appellant as Rs.14,518/-. However, it is not disputed that the said witness PW-4 was not a summoned witness and had not produced any record pertaining to the service or the salary of the appellant.

In my opinion, in view of the uncontroverted facts as noted above, the compensation awarded by the learned Tribunal is just and fair in the facts and circumstances of the case. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon’ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is “just”. In my considered view, in the present case, the learned Tribunal has awarded a very “just” compensation, which is in accordance with the law laid down by the Hon’ble Supreme Court and therefore does not warrant the interference of this Court. In case of **KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176**, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

Dismissed.

(Nidhi Gupta)
Judge

25.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No