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

CM-10322-C-II-2011 IN/AND
FAO-3110-2011 (O&M)
Date of Decision: 05.05.2023

Sh. Shamshad Ali ..... Appellant

Versus

Mohan Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ashwani Arora, Advocate,
for the appellant.

Ms. Madhu Sharma, Advocate,
for respondent No.3-Insurance Company.

*****

RAJBIR SEHRAWAT, J. (ORAL)

CM-10322-C-II-2011

This is an application for condonation of delay of 05 days in filing the appeal.

Notice in the application was issued on 25.08.2011 but no reply to this application has been filed so far. Learned counsel for the respondent-Insurance Company submits that she has no objection, if the application is allowed.

For the reasons mentioned in the application and no objection by the counsel for the respondent-Insurance Company, the same is allowed and the delay of 05 days in filing the appeal is condoned.

Main Case

The present appeal has been filed by the claimant challenging the award dated 29.11.2010 passed by the Motor Accident Claims Tribunal, Chandigarh (in short, 'the Tribunal'), on the ground of insufficiency of the compensation awarded by the Tribunal for the injuries suffered by the claimant in Motor Vehicle Accident.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts, as involved in the present appeal, are that on 14.02.2006 at about 07:00 p.m., claimant was standing in front of Rani Bagh, Derabassi on the left side of the road leading from Lalru to Derabassi. At that time, a motorcycle bearing registration No.PB-70-9687, which was being driven by respondent No.1 at a high speed and in a rash and negligent manner, came there and struck against the claimant. As a result, the claimant fell down on the road and received serious injuries. He was removed to the hospital immediately. On these facts, the claimant had filed the petition claiming compensation; asserting therein that he was working as a labourer and he was earning Rs.3,000/- per month. In the said accident, he had suffered 5% permanent disability. On account of the injuries, he had to remain admitted in hospital for about two months and was operated upon twice. On treatment, the claimant had spent a huge amount. The claimant asserted that he was of the age of 35 years. Accordingly, an amount of

Rs.15,00,000/- was claimed as compensation.

On being put to notice, respondent No.1-driver did not appear before the Tribunal. Respondent No.2-owner appeared and filed his written statement denying the factum of the accident altogether. Respondent No.3-Insurance Company also denied the factum of the accident for want of knowledge. It was further asserted that respondent No.1 was not holding a valid and effective driving licence at the time of accident. Hence, it was prayed that the claim petition be dismissed or in alternative, the liability to pay compensation be not thrusted upon respondent No.3-Insurance Company.

In order to prove the case, the claimant himself appeared as PW1 before the Tribunal and examined Dr. Chetan, Senior Resident, Department of Orthopedics, GMCH, Sector-32, Chandigarh. He also tendered his affidavit as Ex.PA and closed his evidence, after placing on record his disability certificate. On the other hand, respondent No.3-Insurance Company tendered a photocopy of the insurance policy as Ex.R1 and closed its evidence. Respondent No.2 did not lead any evidence.

After considering the material on record and hearing the parties, the Tribunal has awarded a total amount of Rs.90,900/- as compensation to the claimant. Out of that, an amount of Rs.20,000/- has been awarded for medicines. For transportation charges, Rs.10,000/- has been awarded. Loss of income has been compensated by Rs.20,000/-. On account of future loss of income, the claimant has been compensated with Rs.10,000/-. Another amount of Rs.20,000/- has been granted for pain and suffering. Beside this, the claimant has been compensated with Rs.10,000/- for special diet and an amount of Rs.900/- has been awarded on account of the publication charges, which he incurred on account of getting the notice qua respondent No.1 published in the newspaper. It is challenging the said award that the present appeal has been filed.

Arguing the case, learned counsel for the appellant has submitted that the approach of the Tribunal is totally non-sustainable. As held by the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another, 2011 ACJ 1**, the Tribunal was required to adopt the multiplier method; by assessing the income and by applying appropriate multiplier keeping in view the age of the claimant. Moreover, even the future loss had to be compensated, as per the judgement rendered by the Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, 2014 ACJ 627**. The counsel has also relied upon the judgment of the Supreme Court rendered in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others, (2017) 16 SCC 680**, to buttress his argument qua claim for loss of future prospects to the extent of 40%, as the claimant was less than 40 years of age at time of accident. Regarding compensation for expenses of medicines, the learned counsel has submitted that the medical bills, which were produced in original before the Tribunal have wrongly been discarded. He has also submitted that the claimant is having implants in the body, for which he had to incur a huge amount. Qua compensation for pain and suffering, learned counsel has submitted that the claimant had to remain in the hospital for about two months and hence he has to be compensated commensurately. Further, the treating doctor has deposed that he could not even walk properly for next ten months, therefore, he has to be compensated for total loss of income for a period of ten months. Hence, the compensation awarded by the Tribunal deserves to be enhanced.

On the other hand, learned counsel for respondent No.3-Insurance Company has submitted that the claimant has already been compensated by the Tribunal by grant of appropriate compensation and no more enhancement is required. However, the learned counsel has not disputed the fact that the compensation deserves to be calculated as per the multiplier method, as laid down by the Supreme Court and that the claimant is not wrong in claiming compensation on account of loss of future prospects and pain and suffering, as per the judgments of the Supreme Court. However, the learned counsel has further submitted that since the insurance company has been granted recovery rights, therefore, the same be not disturbed.

Having heard learned counsel for the parties and having perused the record, this Court finds substance in the arguments raised by the learned counsel for the appellant/claimant. As per the statement of the doctor, the claimant suffered 5% permanent disability. He had to remain indoor patient for about two months. The evidence also shows that the claimant has taken about eight to ten months for being able to walk properly. Therefore, the compensation has to be ascertain by applying the multiplier method, in terms of the judgment of the Supreme Court rendered in **Raj Kumar's case** (supra) by assessing the income and the loss thereof. Although, the Tribunal has not assessed the income of the claimant as such, however, keeping in view the prevalent approximate market rate in the year 2006, it would not be inappropriate to hold that the income of the claimant as a labourer; at the time of accident; was Rs.3,000/- per month. In view of this fact, the claimant deserves to be compensated for total loss of income for the period of two months of hospitalization; and to the extent of 5% of loss of income for the rest of the period for which the multiplier is to be applied. Keeping in view the age of the claimant, the appropriate multiplier of 16 is to be applied in terms of the judgment rendered by Hon'ble the Supreme Court in the case of **Pranay Sethi (supra)**. In terms of the said judgment itself, the claimant is entitled to the compensation on account of loss of future prospects at 40% of the assessed income.

So far as the medical bills are concerned, the record shows that the original bills have been placed on record before the Tribunal. Some of the bills have been taken into consideration by the Tribunal. However, the rest of them have been discarded. But keeping in view the fact that the claimant had to get implants and had to be operated twice, the approximate bill of medicine would be much more than what has been granted by the Tribunal. It is common knowledge that the orthopedic implants costs very high, particularly in those years when the claimant got injured. As a result, the compensation on account of medicines bills is enhanced to Rs.50,000/-. Keeping in view the enormous pain and suffering on account of repeated operations, hospitalization and the problems of follow up, the claimant deserves to be compensated with Rs.40,000/- on that count. However, the special diet and transportation charges are kept intact as awarded by the Tribunal. Ordered accordingly.

In view of the above, the present appeal is allowed. The appellant/claimant is held entitled to the compensation as mentioned below:-

Sr. No.	**Heads**	**Amount assessed**
1.	Income	Rs.3,000 per month
2.	Annual loss @ 5%	{(Rs.3,000 X 5%) X 12 =Rs.1,800
3.	Multiplier	16
4.	Loss of income due to permanent disability.	Rs.1,800 X 16 =Rs.28,800
5.	Loss of future prospects @ 40% due to permanent disability.	Rs.28,800/- X 40% Rs.11,520
6.	Total loss of future income	=Rs.28,800 + Rs.11,520 =Rs.40,320
7.	Loss of income for 10 months	Rs.30,000
8.	Pain and Suffering	Rs.40,000
9.	Medical Bills	Rs.50,000
10.	Transportation	Rs.10,000
11.	Special Diet	Rs.10,000
12.	Publication Charges	Rs.900
13	Total	Rs.1,81,220
14.	Compensation Awarded by MACT	Rs.90,900
15.	**Enhanced Compensation**	**Rs.90,320/-**

The claimant is also entitled for interest on the enhanced amount of compensation at the same rate as has been awarded by the Tribunal from the date of filing of the claim petition till the deposit of the enhanced amount of compensation.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

05.05.2023
adhikari

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No