

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 4692/2015

Date of decision:21/02/2023

Sunil

.....Appellant

Vs.

Mukesh Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashish Gupta, Advocate for the appellant.
 Mr. Parveen Sharma, Advocate for respondents 1 to 3.
 Mr.SS Sidhu, Advocate for respondent no.4.

Nidhi Gupta, J.

C.M.No.14636-CII of 2015

Prayer in this application u/s 5 of the Limitation Act is to condone the delay of 103 days in filing the appeal. The application is supported by an affidavit of the appellant.

Reply to the said application has not been filed by the respondents.

For the reasons stated in the application, the application is allowed and delay of 103 days' in filing the appeal is condoned.

Main Appeal.

This appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.4,65,520/- granted by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide Award dated 4.9.2014 passed in Claim Petition No.77/2013 filed u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence before it held that the injured claimant was injured in a motor vehicular accident that took place on 22.12.2012 due to rash and negligent driving of Truck bearing registration No. HR-69-A-3504 (hereinafter referred to as 'the offending vehicle') by respondent no.1, owned by respondent no.2 and insured by respondent no.4 herein.

Ld. Counsel for the injured claimant/appellant seeks enhancement inter alia on the ground that appellant had suffered serious and grievous injuries in the accident which had resulted in below knee amputation of left leg. It is submitted that the disability of the injured claimant has been assessed by the Medical Board as 75% as per disability certificate Ex.P3. It is submitted that appellant was only 18 years old at the time of accident and his whole life has been ruined, however, nothing has been granted to him by way of marriage prospects, longevity of life, or even towards an artificial limb. It is further submitted that multiplier of 18 should have been applied keeping in mind the age of the claimant; and even future prospects, and loss of amenities of life, should have been granted. Ld. Counsel places reliance upon judgments of Hon'ble Supreme Court in **Syed Sadiq etc. v Divisional**

Manager, United India Insurance Co., Law Finder Doc Id # 515167 and Govind Yadav v. The New India Insurance Company Limited, Law Finder Doc Id # 273493.

Per contra it is submitted by the learned counsel for the respondent Insurance Company that PW6 Dr. Vinod Kumar, SMO, KCGMCH, Karnal in his cross examination had admitted that if the disability of the claimant is assessed with regard to his whole body then it will come down to 37.5%. It is submitted that accordingly functional disability of the claimant is only 37.5% and therefore compensation awarded by the Ld. Tribunal is just and fair in the facts and circumstances of the present case.

No other argument has been raised on behalf of the parties.

Perusal of the impugned Award shows that Ld. Tribunal has calculated the compensation admissible to the claimant in the following manner:-

Injury case	
Age	18 years
Period of hospitalization	22.12.2012 to 19.1.2023
Occupation and income	Student
	Heads of claim
1.Loss of income	Nil
2. Medical expenses including medicines	Rs.2,95,520/-
3. Attendant charges for five days and other expenses	Rs.30,000/-
4. Special diet	Rs.10,000/-
5. Pain and suffering	Rs.20,000/-
6. Disability	Rs.1,00,000/-
7. Transportation	Rs.10,000/-
8. Total	Rs. 4,65,520/-

Perusal of the record of the case shows that appellant/claimant has undergone three operations after the accident in question. In my view, in the case at hand the compensation awarded by the Ld. Tribunal is abysmally low in the facts and circumstances of the case. In similar circumstances, in relied upon case of **Syed Sadiq (supra)**, where one leg of the claimant therein had been amputated the Hon’ble Supreme Court had assessed income of the claimant therein as Rs.6500/- per month. It has been stated that as per relevant Minimum Wages Notification, minimum wages at the relevant time were Rs.5000/- per month. Even amounts granted under other heads is on the lower side, and nothing has been granted towards loss of marriage prospects etc.

Accordingly, compensation admissible to the claimant/appellant is reworked as under:-

Injury case	Below knee amputation of left leg
Age	18 years
Minimum wages at the relevant time	4967.29 rounded off to Rs.5000/-
Loss of future earning	75% permanent disability qua left leg and 37.5% qua whole body
Future prospects @ 40%	2000/-
Monthly income	7000/-
Annual income	7000x12x37.5% = 31,500/-
Multiplier	18
Loss of earning capacity	31500x18= Rs.5,67,000/-
Special diet	Rs.20,000/-
Attendant charges	Rs.30,000/-
Transportation	Rs.10,000/-
Pain and suffering	Rs.50,000/-
Medical expenses	Rs.2,95,520/-
Loss of marriage prospects	Rs.1,00,000/-
Cost of Artificial limb	Rs.2,00,000/-
Total compensation	Rs.12,72,520/-
Already awarded by the Tribunal	Rs.4,65,520/-
Interest	@ 7.5% per annum on enhanced compensation from the date of filing of the petition till realization

Present appeal stands disposed of in above terms.

21/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No