

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
223
FAO-5753-2016 (O&M)
Date of decision: 24.05.2023

Prem Singh
...Appellant(s)
Vs.
Manoj Kumar & Others
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Chouhan Satvinder Singh Sisodia, Advocate
for the appellant.

NIDHI GUPTA, J.

CM-19781-CII-2016

This is an application under Section 151 of Civil
Procedure Code, 1908 seeking condonation of delay of 1482 days in re-
filing the appeal.

No ground is made out to condone such extraordinary
and inordinate delay of 1482 days in re-filing the appeal.

Present application accordingly stands dismissed.

MAIN APPEAL

Present appeal has been filed by the injured-claimant
seeking enhancement of compensation of Rs.1,37,500/- granted by
Motor Accident Claims Tribunal, Ambala (hereinafter referred to as "the
learned Tribunal") vide Award dated 05.03.2012 passed in MACT Petition
No.79 of 2010 filed under Section 166 of the Motor Vehicles Act, 1988
(hereinafter referred to as "the Act").

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the appellant was injured in a motor vehicular accident that took place on 22.11.2010 due to rash and negligent driving of three wheeler bearing registration No.HR-37C-4501 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 6% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Perusal of order sheets shows that the matter was adjourned at request of learned counsel for the appellant on 23.05.2018, 25.07.2018, and on 27.09.2019 there was no representation on behalf of the appellant. Even today, an adjournment was sought by learned counsel for the appellant but as the appeal is of the year 2016 and even notice has not yet been issued in the matter, no ground is made out to adjourn.

4. Learned counsel for the appellant seeks enhancement of compensation on the grounds:

a) that the appellant remained hospitalised from 22.11.2010 till 01.12.2010. The appellant has been disabled in the accident in question and is unable to take care of the agricultural land that he has taken on *theka* basis;

b) that the appellant has spent more than Rs.1.25 lakh on his treatment. The appellant has suffered 20% permanent disability which is not likely to improve;

c) that nothing has been awarded to the appellant on account of loss of future earnings.

5. No other argument is raised on behalf of the appellant.

6. I have heard learned counsel for the appellant.

7. Perusal of the impugned Award shows that Learned Tribunal awarded compensation to the appellant in following manner:-

Heads	Amounts
Treatment expenses	Rs.62,000/-
Conveyance expenses	Rs.2,000/-
Special diet & attendant	Rs.2,000/-
Loss of earnings	Rs.4,000/-
Loss of future earnings	Rs.45,000/-
Pain & suffering	Rs.12,500/-
Loss of amenities of life	Rs.10,000/-
Total	Rs.1,37,500/-

8. Perusal of record of the case shows that appellant was about 55-60 years of age at the time of accident. In the accident in question, the appellant had suffered fracture of lower end of femur. As per testimony of PW1-Dr. K.K. Gandotra, it was proved on record that the appellant remained hospitalised from 22.11.2010 to 01.12.2010. As a result of the fracture, the appellant was operated upon and thereafter, the appellant also underwent follow up treatment till 03.05.2011 as per follow up card (Exhibit P1). As the appellant produced medical bills to the tune of Rs.61,573.93/-, the learned Tribunal duly reimbursed treatment expenses of Rs.62,000/-.

9. As per testimony of PW4-Dr. Pavneesh Aggarwal, the appellant was examined on 25.05.2011 whereupon his disability was assessed as 20%. PW4-Dr. Pavneesh Aggarwal in his cross-examination has deposed that the said disability is not permanent in nature and there were chances of reduction of said disability as the petitioner was under treatment. Admittedly, the disability of the appellant is not permanent and will improve with time. Though, it was the case of the appellant that he had taken five acres of land on *theka* from PW2-Nirmail Singh at the rate of Rs.20,000/- per acre, however, this fact was not part of pleadings of the appellant before the learned Tribunal. Contention on behalf of the appellant that nothing has been granted for loss of future earnings is also incorrect as perusal of the above table reveals that Rs.45,000/- has been granted under the said head. Learned counsel for the appellant is unable to dispute or controvert the above said findings. In this view of the matter, I find the compensation as awarded by learned Tribunal to be just and fair in the facts and circumstances of the case.

10. Accordingly, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed** on merits as well as on grounds of delay.

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

24.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No