

FAO 2211/2018(O&M)
2023:PHHC:038057

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2211/2018(O&M)

Date of decision:02/03/2023

Lakhwinder Singh

.....Appellant

Vs.

Harpal Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamal Chaudhary, Advocate for the appellant.

Nidhi Gupta, J.

CM 8345-CII/2018

1. Since there is delay of 1368 days in filing the present appeal, aforesaid application u/s 5 of the Limitation Act has been filed seeking condonation of said delay, stating therein that the appellant was not aware about remedy of appeal.

2. The reasons given by the applicant-appellant in this application are vague, and do not constitute sufficient cause to condone the delay of more than three years in filing the appeal. Present application is accordingly, dismissed.

Main Appeal.

3. Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.1,39,970/- granted by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') vide Award dated 16.12.2013 passed in MACT Case No.299 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

4. Brief facts of the are that Id. Tribunal on the basis of pleadings and evidence before it held that the appellant had been injured in a motor vehicular accident that took place on 1.10.2009 due to rash and negligent driving of Mini Bus bearing registration No. HP-02-1695 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein. Ld. Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

5. Ld. Counsel for the appellant seeks enhancement of compensation on the ground that nothing has been granted by way of future prospects, marriage prospects, and loss of amenities.

6. It is submitted by the Id. Counsel that appellant had spent Rs. 2 lacs on his treatment and is unable to maintain himself, or carry out daily chores and therefore, the compensation deserves to be enhanced. It is further submitted that appellant was 18 years of age at the time of accident and was studying in Class XIth, however, due to accident was unable to concentrate on his studies. It is also submitted that appellant has suffered

10% disability as a result of the accident and is fully dependent on others for his day to day work, and also remained hospitalized for considerable period.

7. No other argument has been made on behalf of the appellant.

8. Heard Id. Counsel for the appellant.

9. Ld. Tribunal in para 27 of the impugned Award has returned the following findings:-

“27. To assess the disability in non-fatal case reference was made to note 5 of the second schedule. In the present case, the Medical Board has assessed the disability of the claimant at 10% in relation to his lower limb. As discussed earlier the claimant has been held to be a non-earning person, he is awarded a sum of Rs.10,000/- for the injuries suffered by her (sic) in the accident in question. The perusal of discharge summary Ex.CW3/1 reveals that the claimant-Lakhwinder Singh had remained admitted in Oxford Hospital from 02.10.2009 to 10.10.2009 and the perusal of indoor bed head ticket Ex.CW3/A reveals that the claimant remained admitted at J.N.Shori Hospital, Pinjore from 10.10.2009 to 14.10.2009 i.e. total for 13 days in both the hospital. Hence, keeping in view the nature of injuries suffered by the claimant as well as the hospitalization, he is awarded a sum of Rs.13,000/- on account of hospitalization, pain and sufferings. As during the said period the claimant must have spent some amount on special diet and transportation, he is awarded a sum of Rs.8,000/- and Rs.2,000/- towards transportation charges. Further, keeping in view the medicine/investigation charges receipts/bills Ex.PW4/B and Ex.PW4/C the claimant-Lakhvinder Singh is awarded a sum of Rs 1,06,970/-. Though PW3 Dr.Vimal Shori has deposed that they had charged an amount of Rs.40,000/- from the claimant towards treatment, but since no bill in this regard has been produced on record, the aforesaid part of the statement of PW3 cannot be taken into consideration.

10. Perusal of the record of the case shows that in the accident in question the appellant had suffered fracture of left Tibia, and injuries on back and limbs. Thereafter, the appellant was admitted in two different hospitals from 2.10.2009 to 14.10.2009. CW3 Dr. Vimal Shori

from J.N. Shori Hospital, Pinjore where appellant was hospitalized, has deposed that because of the injuries suffered by the appellant he will experience some difficulty in walking and running, and daily household work like going upstairs and lifting heavy objects. In the present case the Medical Board has assessed the permanent disability of the claimant as 10% only in relation to his lower limb. Needless to say, functional disability, would be even less/ half in respect of whole body. Learned counsel for the appellant is unable to controvert the above said facts/ findings.

11. Further, Id. Tribunal has computed the compensation granted to the appellant, in the following manner:

Tabulation of compensation:

<i>Date of accident</i>	<i>01.10.2009</i>
<i>Period of hospitalization</i>	<i>2.10.2009 to 14.10.2009 (as per Ex.CW 3/1 and Ex.CW3/A).</i>
<i>Occupation and income</i>	<i>Nil</i>
<i>Sr.No.</i>	<i>Amount</i>
<i>1. Loss of income from (period not mentioned)</i>	<i>Nil</i>
<i>2. Medical expenses including hospital charges</i>	<i>Rs.,1,06,970/-</i>
<i>(i) Medicines</i>	<i>--</i>
<i>(ii) Hospital Charges</i>	<i>--</i>
<i>(iii) Attendant charges</i>	<i>Nil</i>
<i>(iv) Special diet</i>	<i>Rs.8,000/-</i>
<i>(v) Future medical expenses</i>	<i>Nil</i>
<i>3. Transportation</i>	<i>Rs.2,000/-</i>
<i>4. Reduction in life expectancy/ loss of amenities, Pain and suffering- per fracture per surgery</i>	<i>Nil</i>
<i>5. Pain and suffering per fracture per surgery</i>	<i>Rs.13,000/-</i>
<i>6. Disability in percentage</i>	<i>10%</i>
<i>7. Loss of earning power</i>	<i>Nil</i>

<i>in percentage</i>	
8. <i>Income x % of loss of earning power x multiplier</i>	<i>Rs.10,000/- (in lump sum).</i>
9. <i>Loss of prospect of marriage/special damages</i>	<i>Nil</i>
10. <i>Total</i>	<i>Rs.1,39,970/-</i>

12. In the facts and circumstances of the case as noted above, I find the abovesaid compensation as awarded by the Id. Tribunal to be just and fair. Accordingly, no ground is made out to interfere in the impugned Award.

13. In view of the above, finding no merit in this appeal the same is hereby, dismissed on merits, as well as on grounds of delay.

14. Pending application(s),if any, stand disposed of.

02/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No