

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 4798/2018 (O7M)

Date of decision:17/01/2023

Himanshu (minor) through his father Narvail Singh

.....Appellant

Vs.

Rishi Pal and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.RS Mamli, Advocate for the appellant.

Nidhi Gupta, J.**CM 15963-CII/2018**

Since there is delay of 26 days in filing the appeal, aforesaid application has been filed seeking condonation of delay. The application is supported by an affidavit of the father of the minor appellant.

For the reasons stated in the application, coupled with the fact that the delay is insignificant, the application is allowed and delay of 26 days in filing the appeal is condoned.

Main Appeal

Present appeal has been filed seeking enhancement of compensation of Rs.66,327/- granted by the Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as 'the Tribunal') vide Award dated 2.11.2017 passed in MACP 42/2015 filed under Section 166 of the Motor Vehicles Act,1988.

The learned Tribunal on appraisal of all the material placed before it concluded that the appellant had been injured in a motor vehicular accident that took place on 19.1.2014 due to rash and negligent driving of vehicle bearing registration No. HR-06-AA-0008 (hereinafter referred to as 'the offending vehicle') by respondent no.1, owned by respondent no.2 and insured by respondent no.3.

It is submitted by the learned counsel that the Id. Tribunal has taken the disability of the injured/appellant-Himanshu as 10%. It is submitted that however, in the judgment of Hon'ble Supreme Court in **Syed Sadiq etc. v Divisional Manager, United India Ins.Co., Law Finder Doc Id # 515167** where the Hon'ble High Court had calculated the functional disability of the injured claimant therein only to 13%, the Hon'ble Supreme Court had held the functional disability of the injured/claimant therein to be 85%. It is submitted that accordingly the disability of the appellant herein be also treated as 85%, and compensation be enhanced.

Heard Ld. Counsel.

Perusal of the record shows that in the present case a Medical Board had been constituted which, vide disability certificate Ex. P-49, duly proved by PW Dr. Anuj Mangla, had opined that the appellant had suffered permanent disability to the extent of 10%. Admittedly, the injury suffered by appellant was fracture of '*upper end tibia right with restriction of movement of right knee*'. It is not disputed that permanent disability of 10% was likely to improve with the passage of time.

In the relied upon case the claimant therein was a Cleaner of lorries by profession who had sustained "*fracture on middle 1/3rd of right humerus and comminuted fracture at the junction of upper 1/3rd and middle*

1/3rd of right tibia” and had suffered 22% permanent disability to upper limb and 29% to lower limb. Accordingly, the High Court had calculated the functional disability as 13%, which was taken as 85% in the said case by the Hon’ble Supreme Court, in view of the fact that the appellant/claimant therein earned his livelihood through manual labour. That is not so in the present case. Thus, the facts of the present case are distinguishable from the facts of the relied upon case.

In view of the above facts, I find no ground is made out to interfere in the impugned Award.

Dismissed.

17/01/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No