

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-7400-2018 (O&M)

Date of decision: 15.03.2023

Sukhvinder Singh

...Appellant(s)

Vs.

Parveen Kumar & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajit Singh, Advocate for
Mr. Ankit Aggarwal, Advocate for the appellant.

NIDHI GUPTA, J.

CM-27003-CII-2018

This is an application under Section 151 CPC seeking exemption from filing true typed and certified copy of Award dated 26.03.2018 and granting permission to place on record photocopy of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions.

CM-27004-CII-2018

This is an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 73 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.3,77,495/- awarded by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as "the learned Tribunal") vide Award dated 26.03.2018 passed in MACT

Case No.313 of 2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that claimant/appellant had received injuries in a motor vehicular accident that took place on 07.04.2015 due to rash and negligent driving of car bearing registration No.HR-03R-0145 (hereinafter referred to as “the offending vehicle”) being driven and owned by respondent No.1 and insured by respondent No.2. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia on the ground:

a) that income of the injured-claimant has been taken as Rs.5,943/- which is on lower side. It is submitted that the appellant was a worker in a factory and earning Rs.10,000/- per month but due to accident in question, he has become permanently disabled and is unable to do his work. Accordingly, learned Tribunal is in grave error in taking income of the appellant as only Rs.5,943/- per month;

b) that learned Tribunal is in error in granting only Rs.10,000/- to the appellant for loss of marriage prospects and loss of amenities; and only Rs.20,000/- has been granted towards pain & suffering, special diet and transportation expenses which should be at least Rs.15 lac.

4. No other argument is made on behalf of the appellant.

5. I have heard learned counsel for the appellant.

6. a) Perusal of record of the case shows that pleaded case of the appellant before learned Tribunal was that he was working as an Electrician/*mistri* and earning Rs.20,000/- per month. However, this is at variance with submission made by learned counsel for the appellant, as also in the Grounds of Appeal wherein it has been stated that appellant was a worker in a factory and earning Rs.10,000/- per month;

b) Be that as it may, it has been noted by learned Tribunal in the impugned Award that:

“....Though there is no document to show the educational qualifications of the claimant-petitioner to the effect that he was having some technical qualification of electrician but at the same time, the claimant-petitioner has stated on oath while appearing in the witness box that he is an electrician by profession and he is running a shop of electrician in his village and he has also maintained this version in his cross-examination and thereby, there is no ground to disbelieve his testimony qua the aspect that he is an electrician by profession....”

c) Accordingly, learned Tribunal assessed notional income of the appellant as Rs.5,943/- per month as admissible to a semi-skilled labourer as per notification dated 13.02.2015 issued by Labour Commissioner, Haryana. In view of the above facts, I find said notional income as assessed by the learned Tribunal to be just and fair;

d) Further perusal of impugned Award shows that learned Tribunal has awarded compensation in following manner:-

“17.

<i>Monthly Income</i>	<i>Rs.5943/-</i>
<i>Functional disability</i>	<i>15%</i>
<i>Amount of Compensation</i>	<i>(5943x15%)x12x18=1,92,553/-</i>

Therefore, the claimant-petitioner Sukhvinder Singh is held entitled for the compensation of Rs.1,92,553/- on account of permanent disability under the Head of Loss of future Earnings/ Loss of Income on account of Permanent Disability. Besides that, he is also held entitled to Rs.10,000/- as compensation for Loss of Amenities of Life.

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I. Pecuniary damages (Special damages)

<i>(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.</i>	<i>Rs.78,341 + Rs.15,000/- as an indoor patient (Rs.500 per day x 30 days) = Rs.93,341/-</i>
<i>(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment;</i>	<i>Rs.41,601/- i.e. 5943x7=41,601</i>

(b) Loss of future earning on account of injuries etc.	Rs.1,92,553/- (as assessed above)
(iii) Future medical expenses	Rs.20,000/-

II Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries	Rs.20,000/-
(v) Loss of amenities (and/or loss of prospects of marriage).	Rs.10,000/- (as assessed above)
(vi) Loss of expectation of life (shortening of normal longevity)	Nil/-
Total Compensation	Rs.3,77,495/-

e) The record evidences that the injury suffered by the appellant in accident in question was fracture of left leg as a result of which there is restriction of movement of left knee with permanent disability of 15%. As per disability certificate (Exhibit P2) and deposition of PW3-Dr. Anuj Mangla, disability of appellant of 15% is permanent in nature and not likely to improve. In this view of the matter, learned Tribunal has awarded compensation as above, including Rs.20,000/- towards pain & suffering; Rs.10,000/- towards loss of amenities/loss of marriage prospects; and Rs.20,000/- towards future medical expenses. Bills reproduced by the appellant to the tune of Rs.93,341/-have been duly reimbursed by learned Tribunal.

7. In view of the facts of the present case, I find the compensation as awarded by the learned Tribunal to be just and fair. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon’ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is ‘just’. In my considered view, in the present case, the learned Tribunal has awarded a very ‘just’ compensation, which is in accordance with the law laid down by the Hon’ble Supreme Court and therefore does not warrant the interference of this Court. In case of **KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176**, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and

benevolence cannot be the guiding factor for determining the compensation.

8. Accordingly, I find no error in the impugned Award and present appeal hereby stands, **dismissed**.

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

15.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No