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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6683-2017 (O&M)

DATE OF ORDER: 10.02.2023

Gajender

.....Appellant

Vs.

Ravinder Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr.Kartar Singh Malik, Advocate for the appellant.

Mr.Rajneesh Malhotra, Advocate for the respondent No.3.

Nidhi Gupta, J.

CM-21657-CII-2017

Prayer in this application is for condonation of delay of 10 days in filing the present appeal. For the reasons stated in the application, the same is allowed subject to just exceptions, and the delay is condoned.

FAO-6683-2017

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.1,26,100/- granted to him vide award dated 24.01.2017 passed by the learned Motor Accidents Claims Tribunal, Rohtak, (hereinafter referred to as 'the learned Tribunal') in Claim Petition No.4 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988.

Learned Tribunal, on the basis of pleadings and evidence placed before it, concluded that the appellant had been injured in a motor vehicular accident that took place on 01.10.2015, due to the rash and negligent driving of dumper bearing

registration No.HR-46D-2371 (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.

Learned counsel for the injured appellant seeks enhancement of compensation, *inter alia*, on the ground that prior to the accident, the appellant was a tailor, and in the accident in question, the appellant had suffered 35% permanent disability on his left side of the body, especially, in the left hand and left leg, as a result of which he was unable to do his work satisfactorily. It is stated that his work has suffered tremendously due to the disability, yet, Id. Tribunal has applied formula of Rs. 2000/- per percent of disability and granted meagre amount of Rs.70,000/- only as compensation on account of disability. It is submitted that multiplier of 35% should be applied as the appellant had suffered 35% permanent disability in the accident.

It is further submitted that prior to the accident, the appellant was earning Rs.25,000/- per month, however, nothing has been granted by the Id. Tribunal to the appellant for loss of income during treatment. It is further submitted that only an amount of Rs.5,000/- has been given towards attendant charges which is on the lower side. It is further submitted that nothing has been granted towards future prospects, or for future treatment, or towards pain and suffering.

In response, it is submitted by learned counsel for the respondent-insurance company that as per judgment of the Hon'ble Supreme Court in ***Raj Kumar Versus Ajay Kumar and another, 2011(1) SCC 343***, in case a disability certificate is issued in respect of a limb, then 50% of the stated disability has to be

taken qua the whole body. It is submitted that in the present case, in actual fact, as per disability certificate Ex.P5, no permanent disability in respect of the appellant has been mentioned. It is submitted that the claim of the appellant that he has suffered 35% disability is not supported by any evidence whatsoever.

It is further submitted that the present appeal had been dismissed for non-prosecution by this Court vide order dated 24.10.2019. However, subsequently, vide order dated 9.12.2019, this Court had restored the appeal and directed that *'the appellant shall not be entitled to interest from the date of filing this appeal till the next date of hearing, in case, any enhancement is made. Registry is directed to give a note in this respect with Red ink on the page of memo of parties.'* It is submitted that next date of hearing in the present case was 11.9.2021, and in case, this Court enhances the compensation then interest be granted to the appellant only from 11.09.2021 onwards.

I have heard learned counsel for the parties.

Perusal of the record of the case shows that most of the bills produced by the appellant remained unproved, accordingly, nothing was granted by the Id. Tribunal in respect of the unproved bills. It is further on record that after the accident in question, the appellant remained hospitalised only for one day, from 1.10.2015 to 2.10.2015. Though, the appellant had pleaded that two operations had been conducted on him, however, as per the finding of the learned Tribunal, the appellant has not led any evidence or examined any witness in support of this contention. PW2 Dr. Shubham has duly proved the disability certificate Ex. P-5, as per which the appellant has disability of *"regarding stiffness of left shoulder and elbow, with scarification of left arm and left forearm with elbow, and stiffness of*

left hip and left knee with delayed union.” However, disability certificate Ex. P-5 nowhere mentions any permanent disability suffered by the appellant due to the accident. There is also no denying fact that the appellant suffers from a Post Polio Residual Paralysis (hereinafter referred to as ‘PPRP’) , and there are implants /nails in situ in the left humerus and left femur of the appellant. However, in the disability certificate Ex.P5, the disability because of PPRP left lower limb is not included. Moreover, the claimant has stated that he is unable to do any work.

In this view of the matter, in my considered opinion, it will serve the ends of justice if the compensation awarded to the appellant is enhanced by a lumpsum amount of Rs.5,00,000/-, thus, making the total compensation awarded to the appellant as Rs. 6,26,100/- .

Interest @ 9% as granted by the Id. Tribunal is maintained. However, for the reasons already stated above, the appellant shall be entitled to interest on the enhanced compensation from 11.09.2021 only.

Disposed of as above.

Pending applications, if any, also stand disposed of.

10.02.2023
kanika

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No