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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.26076-CII-2018 in/and
FAO No.7116 of 2018 (O&M)**

Date of decision : 18.10.2024

Piyali Bhattacharyajee

....Applicant/appellant

Versus

Rajdhani Transport Company and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashwani Arora, Advocate
for the applicant/appellant.

Mr. Rahul Pathania, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

CM No.26076-CII-2018

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 97 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 97 days in filing the instant appeal is hereby condoned.

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CM No.26074-CII-2018

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 42 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 42 days in re-filing the instant appeal is hereby condoned.

FAO No.7116 of 2018 (O&M)

Claimant is in appeal aggrieved of award dated 25th of August, 2017 passed by MACT, Chandigarh.

2. The appellant/claimant suffered injuries in motor-vehicular accident dated 3rd of August, 2015.

3. The issue involved in the present appeal relates to compensation.

4. Claimant is a home-maker. Her income has been assessed as Rs.5,000/- per month. Disability has been proved as Exhibit P-21. PW-5 Dr. Rajesh Chhabra was examined to prove the same. In his testimony, apart from proving disability of the claimant to the extent of 49% permanent physical disability in relation to whole body, he testified that there was no chance of any improvement. Meaning thereby that the claimant has been rendered crippled for whole life.

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5. Counsel for the appellant while assailing the impugned award submits that the Tribunal erred in assessing the income of the claimant at a meagre sum of Rs.5,000/-. He further submits that even though it was proved on record that the claimant suffered permanent physical disability w.r.t. whole body to the extent of 49%, yet loss of income has been taken to the extent of 49% only. He thus submits that the award passed by the Tribunal needs to be modified and the compensation awarded needs to be enhanced.

6. Mr. Rahul Pathania, Advocate counsel for respondent No.3/Insurance Company however submits that the Tribunal has passed a well reasoned order. There being no evidence w.r.t. income of the claimant, her monthly salary has been rightly assessed @ Rs.5,000/- per month.

7. I have heard counsel for the parties and have carefully gone through records of the case.

8. Though there is no evidence on record to support the claim of the claimant that she was taking tuitions and earning Rs.10,000/- per month however, it stands proved that she is a home-maker. So far as the contribution of a home-maker in the family is concerned, Tribunal has rightly held that her contribution to the family needs to be assessed in a right earnest. The same was followed by this Court in FAO No.6400 of 2023 titled as '**United India Insurance Company Limited vs. Poonam Devi and others**', to observe as under :

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“18. Coming on to the cross-objection by Jyoti etc. seeking compensation awarded on account of death of Nirmala Devi, Tribunal erred in taking her notional income @ Rs.9,000/- which is less than even unskilled worker. Tribunal has assessed a homemaker equivalent to a semi-skilled worker which is overtly wrong. This Court in the case of **United India Insurance Co. Ltd vs. Sube Singh and others**, passed in **FAO No. 218- 2014** while dealing with the issue of income of homemaker for the purpose of compensation under MACT held as under:-

“while dismissing the appeal filed by the Insurance Company against the award of the Tribunal wherein the Tribunal took the income of a house wife at Rs.9000/- per month, held that to tag a house wife as skilled labour alone does not do complete justice to her multifarious role as home manager. House wife is something more than mere skilled worker and it would not be unreasonable to estimate contribution of deceased at higher figure. The SLP filed against the said judgment has also been dismissed.

12. Thus, income of the deceased, who was a homemaker has to be assessed at Rs.10,000/- per month. An element of 40% future prospects needs to be added. Thus, in the considered opinion of this Court even if the compensation awarded by the Tribunal is recalculated it would not make substantial difference in the same quantitatively.”

9. While dealing with the inter-play with the physical disability and the loss of income, Apex Court in the case of **Chandramma vs. Manager, Regional Office, NCC Limited and another, (2023)2 SCC 144** observed as under:

“18. Predominantly, it is to be noted that the appellant is suffering from permanent partial disablement which also implies that she will not be able to do anything manually such as unloading

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building materials or using hand tools like shovels or picks or operating other machinery. Therefore, On the issue of disability, what is relevant is the statement of the Dr. Mallikarjun who examined the appellant for making an assessment of the disability. The disability report showed that there is Permanent Partial Disability of about 58% of the limb, which corresponds with 26% whole body.

19. There is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated her from doing the work which she was capable of doing. The said work was of that of a laborer. Therefore, the Commissioner for Workmen's Compensation was wrong in holding that the disability of the appellant will have to be treated as 20% disability as the work of an appellant involves lifting heavy weights and the appellant has been rendered incapable from doing such work due to her disability. Hence, the case of the appellant will be covered by the definition of 'total disablement', therefore, being 100% disabled."

10. Guided by the aforesaid observations made by Supreme Court and in view of the fact that the permanent disability suffered by the claimant has been assessed to be 49% of the whole body with there being no scope of improvement, the loss of income is assessed at 100%. Multiplier of 15 has been rightly applied by the Courts below. 50% future prospects needs to be added. Apart from the aforesaid amounts claimant is also awarded an amount of Rs.2.00 lacs for pain and sufferings. The compensation under the head of attendant charges is enhanced from Rs.10,000/- to Rs.50,000/-.

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Under the head of Diet & Nutrition, the compensation is enhanced from Rs.15,000/- to Rs.25,000/-.

- 11. With the aforesaid, modification in the impugned award, the instant appeal is disposed off.
- 12. Pending application(s), if any, shall also stand disposed off.

October 18, 2024
Dpr

(Pankaj Jain)
Judge

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