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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 5<sup>th</sup> November, 2024*

+ **MAC.APP. 40/2020**

PARVEEN SHARMA .....Appellant

Through: Counsel for appellant.

versus

SUMEER MEHTA & ANR (HDFC ERGO GENERAL  
INSURANCE CO LTD) .....Respondent

Through: Mr. Sameer Nandwani for R-2  
(HDFC).

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

**CM APPL. 3721/2020 (condonation of delay)**

1. The Application under *Section 5 of the Limitation Act, 1963* has been filed on behalf of the Appellant/ Claimant Praveen Sharma seeking condonation of delay of 1816 days in filing Appeal against the Award dated 01.10.2014.

2. It is submitted that the Appellant is a poor person and despite his best efforts, could not collect the money to file the Appeal. Additional Affidavit has been filed on behalf of the Appellant, wherein it is stated that he had lost his job and was not working anywhere. He had been taking up small jobs but was having difficulty in performing the duties assigned to him because of the injuries sustained in the accident. He was barely earning enough for his



daily sustenance. He is a poor man and was unable to approach the counsel for filing the Appeal. In the meanwhile, due to change of the Office of the counsel for the Appellant, the file got tagged with some other file inadvertently. Therefore, the delay be condoned.

3. *Learned counsel on behalf of the Insurance Company* has opposed the Application on the ground that there is a delay of more than five years for which no cogent explanation has been given and the Application is liable to be dismissed.

4. **Submissions heard.**

5. The reasons for seeking condonation of delay, has to be considered in the context of the Appeal, which has been filed by the injured for seeking enhancement of the compensation amount as granted *vide* Award dated 01.10.2014. Considering that this is a benevolent legislation for which the ignorant and poor people cannot be made to suffer, the delay in filing the Appeal, is hereby condoned. However, the Appellant shall not be entitled to any interest in case of the enhancement of the Compensation amount.

6. The Application is accordingly allowed.

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7. The Appeal under Section 173 of the Motor Vehicle Act, 1988, has been filed on behalf of the claimant/injured, Mr. Parveen Sharma, for enhancement of the compensation granted to him *vide* the Impugned Award dated 01.10.2014, in the sum of Rs.1,05,800/- along with the interest @7.5% p.a. on the sum of Rs.85,000/-.

8. Admittedly, the injured met with an accident on 03.05.2013 while he was going on his motorcycle and sustained injuries. The FIR No. 132/2013 under S.279/337 IPC was registered against the offending vehicle bearing No. DL-



9CR-5362, which was admittedly insured with respondent No. 2/HDFC ERGO General Insurance Co. Ltd.

9. Learned counsel for the Claimant has sought enhancement of compensation on the following grounds:-

- (i) *He had incurred expenditure of Rs.10,615/- which is supported by the bills collectively Ex.PW-1/4 but the same has been declined by observing that the bills were paid by the employer.*
- (ii) *The compensation under the non-pecuniary heads, is less and is liable to be enhanced.*

**10. Submissions heard.**

11. The first ground on which enhancement is sought is, that the medical bills in the sum of Rs.10,615/-, Ex.PW-1/4 were duly proved by the petitioner despite which the same have been declined on the ground that the payment of the Medical Bills had been done by the employer, but the learned Tribunal failed to consider that the medical expenditure towards the Bills, had to be subsequently reimbursed to the employer by the claimant.

12. The learned Tribunal in the impugned Award has duly considered the evidence of the Claimant and made reference to his cross-examination wherein he unequivocally stated that the expenses on his treatment were borne by his employer. He did not even voluntarily state that the said amount paid by his employer had to be returned to the employer. Ld. Tribunal further observed that though this contention of refund of Medical Bills to the employer was made on behalf of the claimant, but it was nowhere stated in the Claim Petition or in his Affidavit that he had to subsequently return the said amount. In view of the Pleadings and the admissions of the petitioner in the cross-examination, the reimbursement of



the bills collectively Ex.PW-1/4, was declined.

13. Learned counsel on behalf of the Appellant has re-agitated that the medical expenditure has been reimbursed. Pertinently, he himself has stated that the Appellant was so poor and was out of job that he was not even able to collect the money for the Appeal. At the same time, he has alleged the reimbursement of the money to the employer. However, not an iota or evidence or any document, has been placed on record even now to show the reimbursement of medical expenditure.

14. *The learned Tribunal has rightly denied any amount towards the medical expenditure.*

15. The second challenge is to inadequate compensation under various non-pecuniary heads. The non-pecuniary heads under which the compensation has been granted is, as under:-

|                                                  |               |
|--------------------------------------------------|---------------|
| Pain and suffering and loss of amenities of life | Rs.50,000/-   |
| Conveyance and Special Diet                      | Rs.10,000/-   |
| Loss of Income                                   | Rs.25,800/-   |
| Future Treatment                                 | Rs.20,000/-   |
| Total                                            | Rs.1,05,800/- |

16. This may be considered in the context of injuries suffered by the Claimant. His diagnosis is mentioned as “*Fracture both bones right leg*”. He underwent “*interlocking nailing right tibia for the fracture both bones right leg*” as is evident from the OPD Card dated 18.05.2013 of Fortis Flt. Lt. Rajan Dhall Hospital. Thereafter, he took the treatment at AIIMS Hospital, though no document to this effect had been placed on record.

Considering that the petitioner/claimant has suffered fracture of both bones



of his right leg, the amount of Rs.50,000/- for *Pain and Suffering* and Rs.10,000/- towards *Conveyance and Special Diet* is reasonable and fair in the circumstances.

17. *The loss of income @8,600/- for three months* totalling to Rs.25,800/- has been granted. Again, there is no unreasonableness since there is no documentary evidence led to prove that the treatment went beyond three months. Moreover, there is no evidence that he was not able to work and the on reasonable estimation of Fracture taking about this much time to heal, has reasonably granted the loss of Income for three months and no ground is made out for enhancement.

18. Pertinently, future treatment in the sum of Rs.20,000/- has been granted as nail was inserted for the healing of the fracture, even though no such document had been placed on record, to show the requirement of the future treatment.

19. The Compensation granted to the Appellant, is fair and reasonable especially considering that it is an accident of 2013 and the Award had been delivered in October, 2014.

20. The Appeal is without merits and is hereby dismissed.

21. The Appeal is accordingly disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**NOVEMBER 5, 2024/RS**