

(2014) 05 P&H CK 0499

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 3613 of 2012 (O&M) in MACT Case No. 27/2009-2011

Harwinder Singh

APPELLANT

Vs

Bohar Singh and Others

RESPONDENT

Date of Decision: May 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Hon'ble Judges: Jitendra Chauhan, J

Bench: Single Bench

Advocate: N.S. Dandiwal, Advocate for the Appellant; Beant Singh, Advocate for Respondent No. 2 and Mr. Lalit Garg, Advocate for Respondent No. 3, Advocate for the Respondent

Final Decision: Allowed

Judgement

Jitendra Chauhan, J.

This appeal has been preferred by the claimant-appellant against the impugned award dated 06.01.2012 passed by the Motor Accident Claims Tribunal, Moga, with the prayer for enhancement of the compensation.

2. Along with the appeal, an application under Order 41, Rule 27 C.P.C. for additional evidence has been filed by the appellant. The appellant has placed on record the disability certificate (Annexure-A1), dated 29.12.2010, issued by the Chief Medical Officer, Civil Hospital, Moga.

3. The learned counsel for the appellant argues that the learned Tribunal has not awarded a single penny towards disability. He further submitted that an application dated 10.12.2011 for leading additional evidence to prove the factum of disability filed by the claimant was dismissed by the learned Tribunal vide order dated 03.01.2012, resulting into miscarriage of justice occasioned by irreparable loss to the claimants. He further submitted that sufficient opportunity was afforded to the claimant-appellant to assail the order of dismissal passed in the application, before

passing the impugned award dated 06.01.2012. He further submitted that the disability was to the extent of 40%.

4. The learned counsel for the respondent-Insurance Company argues that the learned Tribunal rightly dismissed the application for additional evidence as the claimant could not show the exercise of due diligence or to furnish reasonable excuse to give any reason as to why the said piece of evidence could not be proved at the appropriate stage.

5. I have heard the learned counsel for the parties and perused the record carefully.

6. The record of the Tribunal shows that the application was dismissed on 03.01.2012, and on the next date i.e. 06.01.2012, the impugned order was pronounced. The appellant did not have any opportunity to challenge the order dated 03.01.2012. The disability certificate, photostat copy of which is annexure A-1, *prima facie* show the disability to the extent of 40%. Keeping in view the nature, of injuries and the extent of disability, this Court feels that the matter deserves a fresh consideration and accordingly, the same is remanded back to the learned Tribunal for recording a fresh finding after affording opportunity to the claimant-appellant to prove the nature of injuries and the disability certificate. Therefore, the findings on issue No. 2, so far as the quantum of compensation is concerned, are hereby reversed. The other findings are, hereby, affirmed.

7. Accordingly, this appeal is allowed, the order dated 03.01.2012 dismissing the application for leading additional evidence is set aside, application dated 10.12.2011 for leading additional evidence to prove the disability certificate is allowed as prayed for; the award dated 06.01.2012 passed by the Motor Accident Claims Tribunal, Moga is modified as indicated above and the case is remanded to the learned Tribunal for disposal according to law as directed above.

8. The parties are directed to appear before the learned Tribunal on 01.07.2014, who shall fix dates for leading evidence by the claimant-appellant with an opportunity to the opposite party to rebut the same.

9. Although, the accident took place on 13.05.2009 yet, the claimants are to receive compensation. The Tribunal shall make endeavour to expedite the hearing and to complete the whole process, within six months, from the receipt of the certified copy of this order.