

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

**FAO No.4337 of 2014 (O&M).  
Date of Decision: 28.03.2016.**

Randhir Yadav ....Appellant.

**VERSUS**

Muklesh Devi and others ....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. J.P. Sharma, Advocate for the appellant.

Mrs. Vandana Malhotra, Advocate for respondent No.4.

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**SNEH PRASHAR, J.**

**CM-12445-CII-2014**

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 274 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 274 days in filing the appeal is hereby condoned subject to all just exceptions.

**FAO-4337-2014**

By way of this appeal, appellant-claimant Randhir Yadav seeks enhancement of compensation awarded by Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") vide the award dated 26.03.2013 passed in MACT Case No.24 RT of 2011/2012 filed by him on account of injuries sustained in a vehicular accident on 16.07.2010.

The submissions made by Mr. J.P. Sharma, learned counsel for the appellant and Mrs. Vandana Malhotra, learned counsel for respondent No.4-insurance company have been heard.

Appellant-claimant had gone to 'Gomukh' for bringing 'Kanwar' and on his back journey on 04.08.2010 at about 8:00 p.m. Near Sarai Bahadur Nagar was hit by Innova car bearing registration No.HR-66-529 (hereinafter referred to as the "offending car") being driven rashly, negligently and in a high speed by Rishi Pal (since deceased) and now represented by respondents No.1 to 3. The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation from driver-owner and insurer of the offending car. The petition was contested by the respondents. On the basis of the rival pleadings of the parties, issues were settled. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly accepted the petition and awarded compensation of Rs.2,60,048/- alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization,

Feeling unsatisfied with the award, the appellant preferred the instant appeal.

Learned counsel for the appellant contends that due to the serious and grievous injuries sustained by the appellant during the accident he has become permanently disabled to the extent of 20% as indicated in the disability certificate Ex.PW8/A proved by PW8 Dr. Dinesh Podar. He remained under treatment and confined to bed for about six months. He was

employed with M/s Shri Shyam Pipe Industries and was drawing a salary of Rs.10,000/- per month. To prove his employment and salary, the appellant examined PW5 Narender Kumar, Record Keeper of the firm, but learned Tribunal wrongly assessed the income of the appellant as Rs.4000/- per month and allowed him compensation to the extent of Rs.20,000/- only on account of loss of income. The amount of Rs.40,000/- awarded on account of permanent disability; Rs.10,000/- for pain and suffering undergone by the appellant; and Rs.2500/- incurred on special diet are extremely inadequate.

It is not a contentious issue that the appellant sustained grievous injuries during the accident caused by Rishi Pal, driver-owner of the offending car due to his rash and negligent driving. As noted by learned Tribunal in Para No.24 of the Award, Narender Kumar, Record Keeper of M/s Shri Shyam Pipe Industries proved the certificate Ex.PW5/B according to which the appellant was working with the said firm and was drawing a salary of Rs.10,000/- per month. Learned Tribunal observed that the certificate Ex.PW5/B was not reliable only on the ground that PW5 did not produce any record. PW5 was the Record Keeper of the employer firm. In case any record for affirming the employment or salary of the appellant was required, the witness could have been asked to produce the same. The respondents produced no evidence to rebut the testimony of PW5. In the said circumstances, there appears no reason to reject/ disbelieve the deposition of PW5. Assessing the income of the appellant as Rs.10,000/- per month, the amount of Rs.20,000/- (Rs.4000 x 5 months) awarded on

account of loss of income is enhanced to Rs.50,000/- (Rs.10,000 x 5 months).

It was not the case of the appellant that his services had been terminated due to the injuries or the disability suffered by him. He suffered no loss of earning capacity as a result of the disability suffered by him. As such, the amount of Rs.40,000/- awarded on account of permanent disability needs no modification. However, in addition to the said amount, an amount of Rs.20,000/- is allowed to the appellant for loss of enjoyment of amenities of life.

The amount of Rs.10,000/- awarded towards pain and suffering is on the lower side. Since the appellant had suffered grievous injuries in his right knee and right hip joint, the amount of Rs.10,000/- awarded for pain and suffering is enhanced to Rs.40,000/- and the amount of Rs.2500/- for special diet is enhanced to Rs.10,000/-.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 26.03.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.87,500/- shall be deposited by respondent No.2- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

**(SNEH PRASHAR)**  
**JUDGE**

**28.03.2016.**  
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