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

FAO No.8097 of 2014(O&M)

Date of decision: 20.4.2018

Firdosh …..Appellant

VERSUS

Jamil Ahmed and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Gupta, Advocate the appellant.

Mr. Kulwinder Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

CM No.21854-CII of 2014

Prayer in this application is for condonation of delay of 345 days in filing the appeal.

Heard.

In view of the averments made in the application supported by an affidavit of Ruzmal Khan- father of the appellant (minor), the application is allowed and delay of 345 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.8097 of 2014

The minor injured is in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Nuh at

Mewat (in short 'the Tribunal') on account of injuries sustained in a motor vehicular accident that took place on 17.09.2009.

The Tribunal has awarded compensation of Rs.31,900/- detailed hereunder:-

Expenses on medical treatment (wrongly mentioned as loss of income)	Rs.16,900/-
Pain and sufferings	Rs.10,000/-
Physical pain and mental shock	Rs. 5,000/-

Counsel for the appellant would argue that as the injured has suffered permanent disability of 12.5%, proved by Dr. Mohd. Farrukh, Orthopaedic Surgeon, General Hospital, Mandi Khera, Mewat PW-2 on account of mild restriction of movements at right hip and right knee with shortening of half inch of right lower limb following fracture shaft femur, claimant is entitled to compensation in the light of judgment of Hon'ble the Supreme Court **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Ltd. and another, 2013(4) RCR (Civil) 295**.

Another submission made by counsel is that the Tribunal has exonerated the insurance company of liability to pay compensation by deciding issue of driving licence (issue No.3) in favour of the insurance company but even if licence possessed by the driver was not valid, insurance company cannot escape its liability to pay compensation to the claimant though it may press for right of recovery against the insured. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(2) RCR (Civil) 114**.

Counsel representing the insurance company has supported findings of the Tribunal on issues No.3 and 4 and so also assessment of compensation.

The injured Firdosh was 4 years at the time of unfortunate occurrence that led her disable to the extent of 12.5% as per the disability certificate Ex.P2 proved by Dr. Mohd. Farrukh. Dr. Mohd. Farrukh has admitted in his cross examination that disability pertains to a particular limb only and not to the whole body. Though there is no medical opinion as to how disability suffered by the victim is to be assessed in terms of functional disability but keeping in view age of the child coupled with that there is shortening by half inch of right lower limb, it would be expedient in the interest of justice that functional disability of the child is assessed less than 10% and she is awarded an amount of Rs.1,00,000/- under first head in the light of judgment in **Master Mallikarjun's case** (supra). Compensation of Rs.10,000/- awarded by the Tribunal for pain and sufferings shall be appropriated towards discomfort, inconvenience and loss of earning to parents of the victim during period of hospitalisation. In this manner, claimant shall be entitled to compensation of Rs.1,31,900/- and additional amount of Rs.1,00,000/-, payable with interest at the rate of 7.5% per annum from the date of petition till realisation, to be invested in a Fixed Deposit payable on her attaining age of majority.

The plea raised by counsel for the appellant that insurance company cannot be exonerated of liability to pay compensation is meritorious when the case is examined in the light of judgment in **Swaran Singh's case** (supra) and latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1)**

PLR 425. The insurance company shall be liable to pay compensation to the claimant but it would be entitled to recover the same from the insured by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

APRIL 20, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no