



FAO-2584-2006 (O&M)

-1-

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

**FAO-2584-2006 (O&M)
Date of Decision: 29.01.2025**

Jasbir Singh

.....Appellant

Vs.

Surinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. K.S.Dhanora, Advocate,
for the appellant.

Mr. R.S.Budhwar, Advocate,
for respondent No.1.

Mr. Sanjiv Pabbi, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred for setting aside the award dated 10.01.2006 passed in the claim petition filed under Sections 166, 140 and 141 of the Motor Vehicles Act, 1988 (for short, 'MV Act') by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal'), whereby claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 16.04.2004 at about 11:30 A.M., the appellant/claimant had taken a lift as a pillion rider on Moped bearing registration No.HYQ-7183, being driven by one Gurnam Singh at a normal speed and on the correct side of the road. When they reached at



Ladwa Chowk, Shahabad, suddenly a Three-Wheeler bearing registration No.HR-65-0889, being driven by respondent No.1 (Surinder Singh), came from behind at a high speed and in a rash and negligent manner, violating traffic rules, hit the said moped from behind. As a result thereof, Gurnam Singh could not control his Moped, which led to the appellant/claimant falling and sustaining multiple grievous injuries on various parts of his body. After the accident, respondent No.1 fled from the spot along with the three-wheeler. However, later on, he was challaned by the police of Police Station, Shahabad and in this regard, FIR No.156 dated 24.04.2004 under Sections 279, 337 and 338 of the Indian Penal Code, 1860, was registered at Police Station Shahabad, District Kurukshetra.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

“1) Whether the accident in question resulting into injuries on the person of claimant Jasbir Singh was caused due to rash and negligent driving of three-wheeler bearing no.HR-65-0889 by its driver, respondent no.1, as alleged? OPP

2) If issue No.1 is proved, to what amount of compensation the petitioner is entitled to and from whom? OPP

3) Whether respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident? OPR.

4) Relief.”



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant/claimant contends that the learned Tribunal dismissed the claim petition on the ground that there was a delay of 09 days in lodging the FIR and the appellant/claimant failed to prove that the accident was caused by rash and negligent driving of respondent No.1-Surinder Singh.

7. *Per contra*, learned counsel for respondents No.1 and 2, however, vehemently argue on the lines of the award dated 10.01.2006 and submit that the award has rightly been dismissed by the learned Tribunal. Therefore, they pray for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award reads as under:-

“7. To begin with, it has been argued by the learned counsel for the claimant that on 16.4.2004 at about 4.30 P.M., he had gone to Shahabad for bringing materials for his shop. He was waiting for some vehicle for going to Shahabad. In the mean time, a Moped bearing no. HYQ-7183, driven by Gurnam Singh, came there and claimant Jasbir Singh took the lift. The Moped was being driven at a moderate speed and on the due left side of the road. When they reached Ladwa-Babain Road, Shahabad, a three-wheeler bearing No. HR-65-0889 came in a rash and negligent manner and dashed the Moped, as a result of which Gurnam Singh, who was driving the Moped, and Jabir Singh claimant, who was pillion rider, had fallen on the road and received multiple injuries. Claimant Jasbir Singh was taken to a Hakim namely Kali Ram at village



Baknore. Hakim applied plaster of paris on his leg. On 21.4.2004 some pain was felt by the claimant and he was taken to Civil Hospital, Shahabad and was medico legally examined there. From CHC, Shahabad, he was referred to L.N.J.P., Hospital, Kurukshetra where he remained admitted for 20 days. Surinder Singh, respondent no. 1, driver of three-wheeler no. HR-65-0889, ran away along with his offending vehicle from the spot. The accident was caused due to rash and negligent driving of respondent no. 1.

8. *To rebut the arguments of the learned counsel for the petitioner/claimant, it has been argued by the learned counsel for respondents no.1 and 2 that no accident had taken place due to rash and negligent driving of respondent no. 1. Rather, no accident had taken place with three-wheeler no. HR-65-0889. The vehicle has been falsely involved with the purpose to claim compensation from the Insurance Company. The claimant might have received injuries at some other place and with some other vehicle. FIR was lodged after 9 days of the alleged accident. The claimant is not sure as to whether the accident was caused at 11.30 A.M. or 4.30 P.M. The place of accident is also disputed. The learned counsel for the claimant-petitioner has failed to prove the rashness and negligence of respondent no. 1 in driving of vehicle and the resultant accident. The learned counsel for respondents no. 1 and 2 have prayed for dismissal of the claim-petition.*

9. *Perusal of the file shows that the present claim-petition has been filed to claim compensation on 16.4.2004 at Ladwa Road, Babain in Shahabad. It has been alleged by the petitioner that he had taken lift on a Moped which was being driven by Gurnam Singh. Three-wheeler bearing no. HR-65-0889 had dashed the Moped no. HYQ-7183 from back side, as a result of which both of them had fallen down and the petitioner had sustained multiple grievous injuries.*

10. *First of all, the time consumed in lodging the F.I.R. has to be taken into consideration. Allegedly, the accident had taken place on 16.4.2004. The copy of F.I.R. has been placed on the record as Ex. PI2. It was registered on 24.4.2004. The copy of statement of claimant-petitioner Jabir Singh has been placed on the record as Ex. P10. It shows that statement of Jabir Singh claimant was recorded on 24.4.2004 at 4.40 P.M. Apparently, the accident had allegedly taken place on 16.4.2004 and the FIR was recorded after 9 days i.e. on*



24.4.2004. The delay in recording the F.I.R. has been tried to be explained by the learned counsel for the petitioner by saying that when injuries were received by Jabir Singh claimant as a result of accident between three-wheeler no. HR-65-0889 and Moped No. HYQ-7183, he was taken to village Baknore to a Hakim namely Kali Ram, who had applied plaster of paris on his leg. It is pertinent to mention here that neither Kali Ram, said Hakim, has been examined by the petitioner nor there is any record to show that plaster of paris was applied by Kali Ram Hakim on the leg of Jasbir Singh claimant. The perusal of cross-examination of Jasbir Singh claimant, PW1, shows that he has admitted that he was doing tyre puncture work at village Babana which is about 7-8 Kms. from Shahabad Markanda. Village Baknore where Jabir Singh claimant was shifted from the place of alleged accident, is at a distance of 35 Kms. It is very surprising that when multiple injuries were received by the claimant, instead of shifting to his own village which was 5-6 Kms., he was taken to a Hakim at a distance of 35-40 Kms. As per explanation of Jabir Singh claimant, he felt severe pain in his leg on 21.4. 2004, when he had gone to Civil Hospital, Shahabad. He had not told any body attending him that he had received injuries in a road side accident./ Dr. Sunita Kumari, Medical Officer, Community Health Centre, Shahabad, PW4 has stated in her cross-examination that the patient had come to Civil Hospital, Shahabad on 21.4.2004 at 1.40 P.M. She has further stated that exact date of suffering of injuries was not told by the patient. He had also not told the manner of suffering of the injuries. She has admitted that injuries had already been plastered. She was specifically asked as to whether duration of injuries could be ascertained, it has been stated by her that she could not ascertain the duration of the injuries. From CHC, Shahabad, the claimant was referred to L.N. J.P., Hospital, Kurukshetra. His X-ray examination was conducted and he remained admitted there for few days. It was only on 24.4.2004 that Ruqa was sent to the police and the police had recorded the statement of Jabir Singh claimant on 24.4.2004. Dr.P.K. Soni, Orthopaedic Surgeon, Soni Hospital, Kurukshetra has been examined as PWo. In cross-examination, it has been stated by him that the patient had not told him the date of suffering of injuries, however, it was an old case. Dr. K.K. Gangotra, C.Lal Hospital, Ambala Cantt. where Jabir Singh claimant was allegedly taken, has been examined as PW7. It has been



stated by him in cross-examination that he was not aware of when the patient had suffered injuries. The claimant has no explanation as to why first information was not given by him to the police on 16.4.2004 immediately when the alleged accident took place. In cross-examination Jabir Singh claimant PW1 has admitted that they had passed in front of Police Station, Shahabad. He has also admitted that on the next day on their return they had again passed through the Police Station, Shababad. Gurnam Singh, who was allegedly driving Moped no. HYQ-7183, has been examined as PW8. In his cross-examination he has admitted that there was Civil Hospital as well as many doctors at Shahabad. He has also admitted that Police Station, Shahabad also falls on the way while going to village Baknore. He has also admitted that village Baknore is at a distance of 40 Kms. from the place of occurrence. He has stated that he returned from village Bakhore on the same day in the night all alone. He had not tried to inform the police even after his return from village Baknore. Learned counsel for the petitioner has tried to explain the delay in lodging the FIR by saying that respondent no. 1, driver of three-wheeler, had assured him to pay the expenses and to compensate the petitioner-injured, yet it is pertinent to point, out it here that as per story of the petitioner / claimant, after the accident, the driver of the three-wheeler ran away from the spot along with his vehicle. When the driver of the three-wheeler had not stopped even for a while after hitting the Moped, it is not clear from the story of the petitioner as to when the driver of the three-wheeler had met him and as to when the assurance was given to him by the driver to compensate him. Even there are no pleadings in the petition that the driver of the offending three-wheeler had assured the petitioner to compensate him and in these circumstances, the FIR was not lodged by him with the police. If the driver of the offending three-wheeler, respondent no.1 had met the claimant in the intervening period of 16.4. 2004 to 24.4.2004, again question arises as to why F.I.R. was not got registered on 16.4.2004 itself.

11. It has further been argued by the learned counsel for the petitioner that even registration of FIR is not pre-condition of filing the claim-petition. He has placed reliance on 1989(1) PLR 159 titled as United India Insurance Co. Ltd. through its Regional Manager, Chandigarh and another Vs Shri Swaran Singh and another wherein it was observed by the Hon'ble High



Court of Punjab & Haryana that lodging of first information report is not an essential pre-requisite for claiming compensation for loss of injury arising out of motor accident. Each case has to be seen on its own facts and circumstances.

12. The ratio in authority, cited by the learned counsel for the petitioner, is not disputed that lodging of FIR is not necessary but if the FIR has been lodged after expiry of a number of days, the delay has to be satisfactorily explained.

13. It is all the more suspicious that the accident takes place on 16.4.2004. Instead of informing the police, the claimant goes to a private Hakim and gets plastered his leg. Gurnam Singh, who had not received any serious injury, did not try to inform the police at any time. For 5 days Jabir Singh keeps quite and when allegedly he feels pain after 5 days, he goes to Civil Hospital, Shahabad and even then he did not try to lodge the F.I.R. It was only on 24.4.2004 that F.I.R. was lodged after recording statement after 9 days. Though the learned counsel for the petitioner has tried to explain the delay in lodging the F.I.R. but it remains an unsuccessful attempt on his part.

14. It seems that Jabir Singh might have suffered fracture at some other place and because of some other reasons. After 9 days on receiving a legal advise, he thought of getting registered the F.I.R. and in those circumstances three-wheeler bearing no. HR-65-0889 was involved and story of taking lift on Moped No. HYQ-7183, being driven by Gurnam Singh, was concocted.

15. The time of accident is another important point to be taken into consideration. First of all, the petition has to be seen. It was filed on 24.7.2004. In paras no.8 and 25 of the said petition, the time of accident has been mentioned as 11.30 A.M. When the evidence of petitioner Jabir Singh was recorded, in the opening line of his deposition he has stated that the accident had taken place at 4.30 P.M. Even in the cross-examination he has stated that he had taken the lift on the Moped at 4.00 P.M. They had reached the place of accident at around 4.30 P.M. The copy of F.I.R. has been placed on the record as Ex. P12 and the copy of statement of claimant Jabir Singh has been placed on the record as Ex.P10. In the said statement, the time of the accident has been mentioned as 4.30 P.M. and in the F.I.R. the time of the accident has been mentioned as 11.30 A.M. Obviously, F.I.R. was registered on the statement of the present claimant. He is



not sure as to whether the accident had taken place at 11.30 A.M. or at 4.30 P.M. It also becomes suspicious.

16. *The place of accident is also equally material. It is pertinent to point it out here that at the time of filing the petition in para no.25 of the petition it has been stated that when the claimant reached Ladwa-Chowk, Shahabad, a three-wheeler, driven by respondent no.1, came at a high speed and hit the Moped from behind. When the statement of the claimant was recorded, he has stated Ladwa-Babain Road in Shahabad.*

17. *Equally material is the site-plan, copy of which has been placed on the record as Ex. P11. At point 'A', the accident has been shown to have taken place. Point A has been shown at G. T. Road from Ambala to Pipli. The road leading towards Ladwa has been shown towards eastern side and point 'A' has been shown on western side. It cannot be said that point A is Ladwa chowk or Ladwa-Babain Road. It has apparently been shown as G.T. Road. Gurnam Singh, who was allegedly driving the Moped, has stated in his examination-in-chief that when he reached G. T. Road, ahead of Ladwa-Babaink Road at Shahabad, a three-wheeler came in a rash and negligent manner.*

18. *Though it has been argued by the learned counsel for the claimant that a criminal case is pending against respondent no. 1 under Sections 279, 337 and 338 IPC and the copy of FIR has also been placed on the record as Ex. P12 and the learned counsel for the petitioner has placed reliance on 1993(2) PLR 109 titled as Girdhari Lal Vs Radhey Shyam and others in which it has been observed that the driver was being tried on account of rash and negligent driving and it is prima facie safe to conclude that the accident had occurred on account of rash and negligent driving, yet pendency of criminal case against the driver of allegedly offending vehicle does not mean that the vehicle, in fact, was involved, and the accident had taken place due to rash and negligent driving of the driver of the offending vehicle.*

19. *Now coming to the point as to how number of the vehicle came to the knowledge of the petitioner-claimant. As per averments of the claimant, the driver of the three-wheeler had fled away from the scene of occurrence along with his three-wheeler. If the driver had runaway after leaving the vehicle, the matter would had been entirely different. In the present case, the vehicle was also not on the spot after causing the accident. In cross-examination, learned counsel for the respondents had*



specifically asked the petitioner as to where his face was when the Moped was being driven. It has been stated by the claimant that his face was towards front side of the Moped. The three-wheeler was about half a furlong behind the Moped. The claimant has further stated that the driver of the Moped did not apply the brakes, rather the driver of the three-wheeler came from behind and struck against the Moped. The front portion of the three-wheeler struck against the rear wheel of the Moped.

20. *There are also some variations as to the manner in which the accident took place. At the time of filing of the petition, in column no.25, the petitioner has written that a three-wheeler bearing no. HR-65-0889 came at a high speed from behind and hit the Moped from behind and due to the impact of hit, the Moped could not be controlled by Gurnam Singh and the claimant fell down. This version has been narrated while deposing by the petitioner as PW1. Copy of F.I.R. has been placed on the record as Ex. P12. The statement of Jabir Singh claimant in the said criminal case has been placed on the record as Ex.P10. In the said statement, Jabir Singh has stated that the driver of the three-wheeler had diverted a cut on the front side of the Moped and the Moped had hit the three-wheeler from back side towards right. Both of the versions of Jabir Singh cannot be correct. Either the three-wheeler had hit the Moped from the back side or the front side of the Moped had hit the back side of the three-wheeler. The copy of mechanical report of the three-wheeler or of the Moped has not been placed on the record. Only in that eventuality, it could not be ascertained as to whether the Moped was hit from front side or from back side.*

21. *It is pertinent to mention here that the claimant was on his back side when three-wheeler No. HR-65-0889 had allegedly struck against the Moped bearing No. HYQ-7183. He had not seen the three-wheeler at the time of alleged accident. After the alleged accident, respondent no. 1, driver of the three-wheeler, had run away from the place of accident. There is no possibility that the claimant might have seen the number of the three-wheeler. The petitioner has stated that the name the driver of the three-wheeler and the number of the three-wheeler were told by Gurnam Singh, driver of the Moped. He came to know the number of the three-wheeler and the name of the driver after 2-3 days of the alleged accident. Gurnam Singh appearing as PW8 has stated that the police had told him the number of the*



three-wheeler and the name of the driver of the three-wheeler, which in turn, was told by him to Jabir Singh claimant. It is astonishing that Gurnam Singh had never gone to the police but the police had told him the name of the driver of the three-wheeler and number of the three-wheeler with which the accident had allegedly taken place on 16.4.2004. Gurnam Singh did not remain with Jasbir Singh claimant allegedly after taking him to village Baknora for plaster of paris but he told the number of the three-wheeler and the name of the driver of the three-wheeler to Jasbir Singh claimant. If Jabir Singh claimant had come to know about the number of the three-wheeler and name of the driver of the three-wheeler, why he kept silent for 9 days to get registered the F.I.R. Gurnam Singh, PW8, driver of the Moped, has stated that after getting plastered the leg of injured Jabir Singh, he came back on the same night to his village, whereas Jabir Singh claimant has stated that he along with Gurnam Singh came back from village Baknora on the next day.

22. *It is apparent on the record that F.I.R. was lodged after 9 days i.e. on 24.4.2004, whereas the accident had allegedly taken place on 16.4.2004. It shows that the story of involvement of three-wheeler bearing no. HR-65-0889 in the accident with Moped bearing no. HYQ-7183 at Ladwa Road, Shahabad Markanda has been formulated by the claimant only with a view to claim compensation.*

23. *The learned counsel for the petitioner has examined Dr. Bimla Gouri as PW2, who has proved Disability Certificate as Ex.P1, Dr.C.R. Khatri, D.I.O., LNJP, Hospital, Kurukshetra as PW3 who had treated Jasbir Singh claimant on 22.4.2004 at L. N. J.P., Hospital, Kurukshetra, Dr. Sunita Kumari, Medical Officer, CHC, Shahabad as PW4, who had medico legally examined Jasbir Singh claimant on 21.4.2004, Dr.P.K. Soni, Orthopaedic Surgeon of Soni Hospital, Kurukshetra as PW6 who had treated Jasbir Singh claimant in his follow-up. Dr. K. K.Gangotra, C.Lal Hospital, Ambala Cantt.as PW7 from where Jasbir Singh claimant got himself operated. The claimant has also placed on record the medical slips as Exs.P2, P3, P5 to P8, P13 to P40, yet these medical bills are relevant only when the claimant succeeds in proving that the accident had taken place due to rash and negligent driving of respondent no.1, driver of three-wheeler bearing no. HR-65-0889.*



24. *From the oral as well as documentary evidence adduced on the record, it is hereby observed that the learned counsel for the claimant-petitioner has failed to prove that on 16.4.2004 at 4.30 P.M., the accident had taken place between three-wheeler bearing no. HR-65-0889 and Moped bearing No. HYQ-7183, at Ladwa Road, Shahabad Markanda, as a result of which Jasbir Singh claimant had received multiple injuries including fracture.*

25. *Consequent upon the aforesaid discussion, issue no. 1 is hereby decided against the claimant and in favour of respondents no.1 and 2.”*

10. Upon a thorough examination of the award, it is evident that the learned Tribunal committed a legal error in dismissing the claim petition on the ground of 9 days delay in lodging the First Information Report (FIR) and the alleged failure of the appellant/claimant to establish that the accident was caused by rash and negligent driving of three-wheeler bearing registration No.HR-65-0889 being driven by respondent No.1 (Surinder Singh).

ANALYSIS OF RECORD

11. Claimant-Jasbir Singh was examined as PW-1. He provided a clear, consistent and credible account of the accident and testified that on 16.04.2004, he was traveling as a pillion rider on a moped driven by Gurnam Singh at a moderate speed and on the correct side of the road when the offending three-wheeler, being driven in a rash and negligent manner by respondent Surinder, struck their vehicle from behind. As a result, both riders fell and sustained multiple injuries. PW-1 explicitly attributed the accident to the reckless driving of the respondent.

12. During his extensive cross-examination, the appellant/claimant's testimony remained unshaken. He provided a plausible and



medically corroborated explanation for the delay in lodging the FIR, stating that due to the severity of his injuries, he was initially taken to a traditional healer before receiving treatment at multiple hospitals. The delay in lodging the FIR, therefore, cannot be viewed in isolation or as a ground to discredit his version, particularly in light of the settled legal position that delay in lodging FIR in cases of personal injury does not *per se* negate the occurrence of the accident when supported by medical and circumstantial evidence.

13. It is settled principle of law that a delay in lodging FIR in cases of personal injury cannot be a sole ground for rejecting a claim, especially when the occurrence of the accident is corroborated by medical and eyewitness testimony. The Hon'ble Supreme Court has consistently held that procedural delays, particularly in cases where the victim is undergoing medical treatment, must be viewed pragmatically rather than technically. Reference at this stage can be made to the case of **Ravi Vs. Badrinarayan and others, 2011(4) SCC 693**, wherein Hon'ble the Apex Court has conclusively held that delay in lodging the FIR cannot be deemed fatal to motor claim proceedings, provided the claimant satisfactorily explain the delay with cogent and reasonable grounds. The relevant extracts of the Ravi Vs. Badrinarayan's case (supra) is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act



mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

14. Gurnam Singh, who was an eye-witness, was examined as PW-8, who was driving the moped at the time of the accident, further substantiates the claimant's version. He unequivocally stated that on 16.04.2004, while riding his moped with the claimant as a pillion rider, the three-wheeler in question, being driven in a rash and negligent manner, hit them from behind, causing injuries to both riders. He also deposed that the driver of the offending vehicle fled the scene immediately after the accident.

15. PW-8, Gurnam Singh's testimony, being that of an independent eyewitness and the rider of the vehicle on which the claimant was traveling,



is crucial in establishing the sequence of events. His deposition withstood cross-examination, and there are no contradictions that would cast doubt on its reliability. The Tribunal, however, failed to appreciate the corroborative nature of his testimony and instead placed undue emphasis on procedural technicalities.

16. The Tribunal failed to appreciate that in motor accident claim cases, the standard of proof is preponderance of probabilities, not proof beyond reasonable doubt. Hon'ble the Supreme Court in **Anita Sharma v. New India Assurance Co. Ltd., 2021(1) SCC(Cri) 475** has held that standard of proof in motor accident matters is one of preponderance of probabilities rather than beyond reasonable doubt and strict principles of evidence and standards of proof like in criminal trial are inapplicable in the MACT claim cases. The relevant extract of the Anita Sharma's case (supra) is reproduced as under:-

*22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in **Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646**, wherein this Court reiterated that:*

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the



touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])

(emphasis supplied)”

17. The medical evidence on record further substantiates the claimant's case. PW-2, Dr. Bimla Gauri, deposed that she, along with other senior medical officers, examined the claimant and found him to have sustained a fracture of the left femur shaft, resulting in a 36% disability due to severe restrictions in knee movement and chronic osteomyelitis. She further confirmed that the injuries were consistent with the history of a road traffic accident. The disability certificate (Exhibit P-1) categorically states that the impairment suffered by the claimant was a direct consequence of the accident.

18. Further, PW-3, Dr. C.R. Khatri, who treated the claimant at L.N.J.P. Hospital, corroborated the nature and extent of the injuries. He testified that the claimant was referred from CHC Shahabad with a history of a road accident and was diagnosed with a femur shaft fracture with left foot drop. He further deposed that the claimant underwent surgical intervention on 11.05.2004, which involved open reduction, internal fixation with a broad dynamic compression plate, and bone grafting. His deposition further established that the claimant required prolonged hospitalization and post-operative care.

19. The medical records and the testimonies of PW-2, Dr. Bimla Gauri, and PW-3, Dr. C.R. Khatri, clearly indicate that the claimant



sustained serious injuries as a result of the accident. The Tribunal, however, failed to accord due weight to this unimpeachable medical evidence and instead relied on conjectures and surmises to dismiss the claim.

20. The Tribunal has committed an error in dismissing the claim petition by adopting a hyper-technical and rigid approach, contrary to settled legal principles. The evidence on record, including the unshaken testimonies of the claimant and the eyewitness, coupled with corroborative medical evidence, unequivocally establishes that the accident occurred due to the rash and negligent driving of the three-wheeler by respondent Surender. The delay in lodging the FIR was reasonably explained and is not a justifiable ground for rejecting the claim. In light of the foregoing, the dismissal of the claim petition is legally unsustainable and warrants interference by this Court.

21. So far as Issue No.3 i.e. whether respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident?, is concerned, the learned Tribunal has decided the issue in favour of the driver of the offending vehicle i.e. respondent No.1 and against the Insurance Company. Meaning thereby, the Insurance Company is held liable to pay the compensation.

22. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and expenses incurred for medical treatment and hospitalization. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.



SETTLED LAW ON COMPENSATION

23. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

General principles relating to compensation in injury cases

5. *The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).*

6. *The heads under which compensation is awarded in personal injury cases are the following :*

Pecuniary damages (Special Damages)

(i) *Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

(a) *Loss of earning during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*



(iii) *Future medical expenses. Non-pecuniary damages (General Damages)*

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

xxx

xxx

xxx

xxx

19. We may now summarise the principles discussed above :

(i) *All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*

(ii) *The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*

(iii) *The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*

(iv) *The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.*

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of*



accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs. 36,000/-.*
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.*
- c) Multiplier applicable with reference to age : 17*
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-*

Illustration 'B' : *The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :*

- a) Annual income prior to the accident : Rs. 36,000/- .*
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.*
- c) Multiplier applicable with reference to age : 17*
- d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-*

Illustration 'C' : *The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :*

- a) Minimum annual income he would
have got if had been employed as an
Engineer : Rs. 60,000/-*



- b) *Loss of future earning per annum*
(70% of the expected annual income) : Rs. 42000/-
- c) *Multiplier applicable (25 years)* : 18
- d) *Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-*

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

24. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit



should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

25. Hon’ble Supreme Court in the case of **Erudhaya Priya Vs. State Express Tran. Corpn. Ltd. 2020 ACJ 2159**, has held as under:-

“7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:



- (i) *Pain, suffering and trauma resulting from the accident;*
- (ii) *Loss of income including future income;*
- (iii) *The inability of the victim to lead a normal life together with its amenities;*
- (iv) *Medical expenses including those that the victim may be required to undertake in future; and*
- (v) *Loss of expectation of life."*

[emphasis supplied]

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

- (i) *compound fracture shaft left humerus*
- (ii) *fracture both bones left forearm*
- (iii) *compound fracture both bones right forearm*
- (iv) *fracture 3rd, 4th & 5th metacarpals right hand*
- (v) *subtrochanteric fracture right femur*
- (vi) *fracture shaft femur*
- (vii) *fracture both bones left leg*

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid



principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish’s case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</i>
<i>Future prospects (50 per cent addition)</i>	<i>Rs.4,90,989/-</i>
<i>Medical expenses including transport charges, nourishment, etc.</i>	<i>Rs.18,46,864/-</i>
<i>Loss of matrimonial prospects</i>	<i>Rs.5,00,000/-</i>
<i>Loss of comfort, loss of amenities and mental agony</i>	<i>Rs.1,50,000/-</i>
<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>Total</i>	<i>Rs.41,69,831/-</i>



The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.

RELIEF

26. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 10.01.2006 is set aside accordingly. The appellant/claimant is entitled to enhanced compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.2,740/-
2	Loss of future prospects (40%)	Rs.1,080/- (40% of Rs.2,740/-)
3	Annual Income	Rs.45,360/- (Rs.3,780 x 12)
4	Loss of earning due to disability (36%)	Rs.16,330/- (36% of Rs.45,360)
5	Multiplier	18
6	Loss of future earning per annum	Rs.2,93,940/- (Rs.16,330 x 18)
7	Medical Expenses	Rs.40,000/-
8	Pain and Suffering	Rs.1,80,000/-
9	Special Diet	Rs.60,000/-
10	Transportation charges	Rs.50,000/-
11	Attendant Charges	Rs.70,000/-
12	Loss of amenities of life	Rs.2,00,000/-
13	Loss of marriage prospects	Rs.2,00,000/-
	Total Compensation	Rs.10,93,940/-

27. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R. Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellant/claimant is



granted the interest @ 9% per annum on the amount of compensation from the date of filing of claim petition till the date of its realization.

28. The Insurance Company-respondent No.2 is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish his bank account details to the Tribunal.

29. Respondent No.2-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Sanjiv Pabbi, Advocate, pursuant to the order dated 18.07.2024 passed in FAO-1682-2007 within a period of 20 days from the date of receipt of the copy of this judgment.

30. Disposed off accordingly.

31. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

29.01.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No