



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

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FAO-3337-2025 (O&M)

Date of Decision: July 22, 2025

New India Assurance Company Ltd.

.....Appellant

Vs.

Sandeep and another

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashwani Talwar, Advocate
for the appellant (s).

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred by the appellant–Insurance Company challenging the quantum of compensation awarded vide Award dated 24.02.2025 passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as ‘the Tribunal’) in a claim petition filed by claimant-respondent No.1 under Section 166 of the Motor Vehicles Act, 1988.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that on 22.03.2022 at about 8:00/9:00 A.M., the petitioner-injured Sandeep was going to attend his duty in H.M College Asthal Bohar from his village Baliyana, on his TVS Star City motor-cycle. He was driving his motorcycle at a normal speed with due care and on his correct side of the road by following all the traffic rules. When he reached near Cock Factory in IMT area, in the meantime, one Alto Car bearing registration No. HR-07-V-8628 (hereinafter referred to as ‘offending vehicle’) came from the opposite side i.e. Rohtak side, at a very high speed, in a zig-zag



manner, without following the traffic rules. Paras Kathpal was driving it rashly and in negligent manner and after coming into the wrong side, he gave a straight dash in the motorcycle of the petitioner and caused the accident. In this accident, petitioner sustained the injuries all over his body. But main injury was multiple fractures in right hand, Head, knee, ankle, hip joint, thigh and shoulder etc. After the accident, the injured/petitioner was taken to Kainos Super Specialty Hospital, Kheri Bye-pass Delhi Road-Rohtak, where, first aid was given to him but due to serious condition of the petitioner, he was referred to P.G.I.M.S., Rohtak, where surgery of his hand and leg was done. The petitioner remained admitted from 22.03.2022 to 28.03.2022 in P.G.I.M.S, Rohtak.

3. Upon notice of the claim petition, appellant-Insurance Company and driver-cum-owner of the offending vehicle appeared and contested the claim petition by filing their separate written replies denying the factum of accident/compensation.

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

1. Whether the accident resulting into injuries to petitioner, took place due to rash and negligent driving of respondent No.1 while driving Alto Car bearing registration No. HR-07-V-8628?OPP.

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

3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.2 is not liable to pay any compensation ? OPR-2

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimant/petitioner.



However, liability to pay the compensation was fastened upon the appellant-Insurance Company. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE APPELLANT

6. Learned counsel for the appellant/Insurance Company contends that the learned Tribunal has erred in assessing the functional disability of the claimant at 55%, despite the fact that the disability, as certified in the 'Disability Certificate' (Ex. P-24), is 22% loco-motor disability. He further contends that there is no rational basis for this enhancement and, hence, the compensation awarded deserves to be reduced. Therefore, he prays that the present appeal be allowed.

7. I have heard learned counsel for the appellant and perused the file with his able assistance.

8. The relevant portion of the award is reproduced as under:-

*"Also, his permanent disability assessed at 22% as per his disability certificate Ex. 24, and considering the resultant loss which this injury entails to the earning or income generating capacity of claimant, as he is stated to be doing sweeper and domestic work at the time of accident, but considering his age and deposition of PW5 Dr. Harvinder Singh (inadvertently written as PW4) regarding his permanent disability, he will not be able to effectively carry on the activities and he will be restricted in discharging his previous activities and functions, so considering the totality of facts and circumstances his functional disability is assessed at 55%, hence loss of earnings with 55% functional disability comes out to be Rs. 14,93,184. Reliance can be placed on law laid down by Hon'ble Supreme Court in case titled as **Jithendran v The New India Assurance Co. Ltd & Anr Civil Appeal No. 6494 of 2021 (D.o.D-27.10.2021)**.*



9. A careful reading of the award shows that the learned Tribunal has rightly distinguished between physical disability and functional disability. While the medical board assessed a 22% loco-moto disability as is evident from Ex. P-24, the learned Tribunal took into account the impact of this disability on actual earning capacity of claimant-petitioner.

10. It is a settled proposition of law that functional disability need not mirror the exact percentage of physical disability. Functional disability must be assessed with reference to the occupation of the claimant-victim, nature of work, and the extent to which the disability affects his capacity to earn a livelihood.

11. In the instant case, the claimant-petitioner was engaged in a manual labour, including sweeping and domestic work, which evidently requires full physical mobility and endurance. The deposition of PW5-Dr. Harvinder Singh (inadvertently recorded as PW4) establishes that the injuries suffered significantly impair the ability of claimant-petitioner to perform such duties. The learned Tribunal, after appreciating this deposition and over all circumstances, rightly assessed the functional disability of claimant-petitioner at 55%.

12. The Hon'ble Supreme Court in ***Yadava Kumar v. Divisional Manager, National Insurance Co. Ltd., (2010) 10 SCC 341***, has emphasized that the determination of quantum is a fact-dependent exercise which must be liberal and not parsimonious. It must be emphasized that compensation is a more comprehensive form of pecuniary relief which involves a broad-based approach unlike damages. The same is reproduced as under:-



17. While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.

13. This Court finds that the reasoning of the learned Tribunal is well-founded, keeping in mind the nature of the employment of claimant-petitioner and the principle of law laid down by the Hon'ble Apex Court. The assessment of functional disability from 22% to 55% is not arbitrary but is based on the practical impact of the injury on the earning capacity of the claimant-petitioner.

14. Thus, the findings of the learned Tribunal are neither perverse nor contrary to law, which call for no interference by this Court in the impugned award. Therefore, I do not find any infirmity in the award dated 24.02.2025, passed by the Ld. Tribunal, Rohtak and same is hereby upheld.

15. Accordingly, the appeal is dismissed being devoid of any merit.

16. All the pending application(s) also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

July 22, 2025

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Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No