



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

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**FAO-5348-2017 (O&M)
Date of decision : 05.08.2025**

HDFC Ergo General Insurance Co. Ltd.**..... Appellant**

versus

Sakir and another**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Pradeep, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Digvijay, Advocate for
Mr. Ashish Gupta, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)**CM-16774-CII-2017**

This is an application for condonation of delay of 41 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 41 days in filing the appeal stands condoned.

Main case

1. Insurance company is in appeal against the order passed by Commissioner under the Workmen's Compensation Act, 1923.
2. The respondent filed claim application seeking compensation on account of injuries suffered by him in an accident arising out of and during the course of his employment while working as driver on insured vehicle. The only issue raised is that even though the claimant suffered 40% permanent physical disability, however the



compensation was awarded taking his functional disability to be 100%.

3. I have heard counsel for the parties and have carefully gone through the records of the case.

4. The respondent was working as Driver to earn his livelihood. It has been proved on record that owing to accident dated 15.12.2014 arising out of the course of employment, the respondent-claimant suffered injuries.

5. As a result of the injuries, lateral movement of his right ankle and left ankle were got reconstructed. He was rendered disabled from pursuing the vocation of driving from which he was earning his livelihood.

6. The issue is no more *res integra*, the same has been explained by Supreme Court in ***Pratap Narain Singh Deo vs. Srinivas Sabata (1976) 1 SCC 289*** observing as under:-

“5. The expression "total disablement" has been defined in section 2(1)(l) of the Act as follows:

" "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

"The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel



for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal." "

7. The aforesaid ratio of law has been reiterated by Supreme Court in the case of ***Indra Bai vs. Oriental Insurance Company Ltd. and another (2023) 8 SCC 217***, observing as under:-

“28. In light of the aforesaid decisions and the definition of the term “total disablement” as provided by clause (l) of sub-section (1) of Section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement. Thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under Section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement.

29. In Mohd. Nasir (supra), which has been relied by the High Court, the workman was a cleaner. He had suffered fracture in the leg. It was held that such injury would not amount to permanent loss of the use of the entire leg. Hence, the disablement was found partial and not total.”

8. In view of above, this Court finds that no fault can be found with Commissioner assessing the compensation payable to the claimant taking his functional disability of 100%, even though he was permanently disabled to the extent of 40%.

9. Finding no merits in the present appeal, the same is ordered to be dismissed.



10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

05.08.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No