



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

**FAO-630-2025 (O&M)
Date of Decision: 05.02.2025**

Reliance General Insurance Company LimitedAppellant

Versus

Vijay Verma and OthersRespondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-2032-CII-2025

Prayer in the present application filed under Section 5 of the Limitation Act is for condonation of delay of 11 days in filing the present appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, delay of 11 days in filing the present appeal is condoned.

The application is accordingly disposed of.

CM-2031-CII-2025

Prayer in the present application filed under Section 151 of the Code of Civil Procedure is for condonation of delay of 17 days in re-filing the present appeal.

Heard.

**FAO-630-2025 (O&M)****-2-**

For the reasons mentioned in the application, which is duly supported by an affidavit, delay of 17 days in re-filing the present appeal is condoned.

The application is accordingly disposed of.

FAO-630-2025 (O&M)

The Insurance Company is in appeal against the award dated 23.08.2024 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal) vide which the claim petition preferred by respondent No.1-claimant Vijay Verma under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of injuries suffered by him in a motor vehicular accident which took place on 16.11.2019 was allowed and a sum of Rs.29,21,600/- was awarded as compensation.

2. The facts, in brief, are that on 16.11.2019, a Canter bearing registration No.HR-61D-3080 was going from Pipli to Shahabad. At about 04:45 AM, when the vehicle was about 06 Kms from Pipli, a truck bearing Registration No.HP-64B-5204 (hereinafter referred to as the 'offending vehicle') had been parked by respondent No.2-Driver on the metalled portion of the road without any indicator or parking lights. The Canter struck on the rear side of the offending vehicle. As a result of the accident, respondent No.1-claimant Vijay Verma who was working as a cleaner on the offending vehicle and was checking its air pressure, fell in front of the offending vehicle and came under its front wheels. The driver of the Canter died whereas respondent No.1-claimant suffered grievous injuries and his right leg was amputated. A sum of Rs.50,00,000/- was claimed as



compensation by respondent No.1-claimant on account of the permanent disability suffered by him on account of the amputation.

3. The claim petition was resisted by the respondents. The basic stand taken was that a false case had been got registered by the claimants in collusion with the police. The factum of the accident was, in fact, also denied.

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

“1. Whether the accident resulting in death of Anil Kumar of MACP No.154 of 2020 and the injuries of claimant Vijay Verma of MACP Case No.155 of 2020, took place on 16.11.2019 at 4.45 AM, in the area of Police Station, Sadar, Thanesar, Kurukshetra, took place due to the sole fault and negligent act of respondent No.1 while parking the offending truck bearing registration No.HP-64B-5204 on the metalled portion of the road in a dangerous manner without any indicator or parking lights etc. which was moved by respondent No.2? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to compensation and from whom? OPP

3. Whether respondent No.1 was not having a valid and effective driving license at the time of accident and there was violation of the terms and conditions of the insurance policy by respondents No.1 and 2? OPR-3

4. Relief.”

5. Parties led their respective evidence.

6. After considering the evidence, the Tribunal allowed the claim petition filed by respondent No.1-claimant and awarded a sum of Rs.29,21,600/-. Aggrieved by the same, the present appeal has been preferred.



7. The sole argument that has been raised by learned counsel for the appellant is that though respondent No.1-claimant had lost his leg and his right leg was amputated, his functional disability could not have been assessed at 100% as even Dr. Manu Soni who appeared as PW-5, stated that the disability of 100% assessed by the Medical Board was as regards the particular limb and not as regards the whole body and that if the disability as regards the whole body is to be considered, it would be reduced by 30%. Learned counsel submits that accordingly, the disability should have been assessed at 70% instead of 100% as was done by the Tribunal. Learned counsel submits that respondent No.1-claimant could have done some other job like that of a Chowkidar etc. and in any case, the functional disability could not be assessed at 100%.

8. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

9. The concept of functional disability was explained by the Supreme Court of India in the case of ***Raj Kumar vs. Ajay Kumar and another* (2011) 1 SCC 343**. It was observed by the Supreme Court that the percentage of permanent disability is usually expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb, meaning thereby that when a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. It was observed that the extent of disability of a limb expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole



body. It was explained that if there is 60% disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body would be 140% and the same in fact would not exceed 100%. It was held that once the claimant suffered a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. It was held that what is required to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured. The Supreme Court then went on to summarise the principles as regards functional disability:-

“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 the percentage of loss of earning capacity is the same as the 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 to 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.”***



10. In the present case, the age of respondent No.1-claimant was found to be 24 years. He was working as a cleaner on the offending vehicle. As per the evidence which was produced on record, his right leg was amputated. The Disability Certificate (Ex.P-1) assessed his permanent disability as 100% with amputation below the right knee. No doubt, the Orthopaedic Surgeon Mr. Manu Soni, who appeared as PW-5 stated that this disability was for a particular limb and not for the whole body and that if the disability was assessed for the whole body, it would be reduced by 30%. However, the Tribunal then rightly held that it was the functional disability which had to be seen and since respondent No.1-claimant was a cleaner on the offending vehicle and had lost his leg, it would affect his earning capacity to the extent of 100% and, therefore, rightly assessed the functional disability at 100%. A cleaner of a truck, in the considered opinion of this Court, would not be in a position to do any job of similar nature on account of the disability. At the cost of repetition, it needs to be kept in mind that respondent No.1-claimant was a young man of 24 years of age. His whole life is in front of him which he would have to lead with the severe permanent disability. No amount of compensation would be sufficient to compensate his loss. However, adequate and just compensation in accordance with the settled principles of law has to be granted to him. Keeping in view the law on the subject and the facts of this case, in the considered opinion of this Court, there is no illegality in the findings recorded by the Tribunal as regards the percentage of the disability of respondent No.1-claimant.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

05.02.2025
Prince Chawla/vcgarg

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