IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 27.01.2026

FAO-2318-2020(O&M)

Hardeep Singh

...Appellant(s)

Vs.

Shahid Khan & Others

...Respondent(s)

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FAO-5243-2019(O&M)

Shri Ram General Insurance Company Ltd.

...Appellant(s)

Vs.

Hardeep Singh & Others

...Respondent(s)

***

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Aminder Singh, Advocate
for the appellant/injured in FAO-2318-2020;
for respondent No.2 in FAO-5243-2019.

Mr. Sachin Ohri, Advocate
for the appellant/Insurance Company
in FAO-5243-2019.

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NIDHI GUPTA, J.

CM-6497-CII-2020 IN FAO-2318-2020

This is an application under Section 5 of Limitation Act for condonation of delay of 247 days in filing the appeal.

The only reason cited in the application for not filing the present appeal within limitation is in Para 2, which reads as follows:-

> *"2. That the appellants do not know about the technicalities of law regarding limitations and all. Moreover after the accident the claimant suffered permanent disability and had to undergo 3 operations over a period of 4 months and in view of the above had to remain under constant treatment for a very long time. Moreover the appellant also suffered a lot in terms of finances and emotionally. The whole responsibility of the family and its money etc was with the appellant. Only after the appellant recovered a little from his injuries and could some money that he is filing the present appeal. All the aforesaid reasons caused a delay in filing."*

The said averments of the applicant/appellant are vague and general, and do not constitute sufficient cause for condonation of inordinate and extraordinary delay of 247 days in filing the present appeal. Present application accordingly stands **dismissed**.

FAO-2318-2020

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.6,39,824/- awarded by Motor Accident Claims Tribunal, Sangrur (hereinafter 'the learned Tribunal') vide Award dated 13.03.2019 passed in MACT Case No.24 dated 28.08.2017 filed under Section 166 of the Motor Vehicles Act (hereinafter "the Act").

FAO-5243-2019

Present appeal has been filed by the Insurance Company against the Award dated 13.03.2019 passed by the learned Tribunal whereby in

MACT Case No.24 dated 28.08.2017 filed by the injured-claimant/respondent No.1 herein, the learned Tribunal has awarded compensation of Rs.6,39,824/-.

Both the above cross-appeals are being disposed of by this common order as both arise out of the same accident dated 28.12.2016; against same Award dated 13.03.2019; and parties, facts, and issues involved in both the appeals are identical. For the sake of brevity, the facts are being taken from and parties are being referred to as per their litigative status in the FAO-2318-2020 titled as "Hardeep Singh Vs. Shahid Khan & Others".

2. Brief facts of the case are that Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the appellant/injured-claimant had suffered injuries in a motor vehicular accident that took place on 28.12.2016 due to the rash and negligent driving of the tractor trolley bearing registration No.RJ-31-RA-7238 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3.

3. Learned counsel for the appellant/claimant seeks enhancement of compensation by submitting that in the accident in question, the appellant had suffered functional disability of 15%. It is submitted that the appellant was only 33 years old at the time of accident and prior to the accident, he used to run a small-scale business. However, due to the disability, the appellant is unable to carry out his small-scale business. As such, the

functional disability of the appellant ought to have been assessed as much more. It is submitted that for this reason, future prospects also ought to have been added on the higher side. Even meagre amount of Rs.9,000/- has been awarded towards Attendant Charges and other heads, which deserves to be enhanced. Transportation Charges have also been given on the lower side. It is accordingly prayed that the present appeal be allowed and compensation paid to the appellant be enhanced.

4. Per contra, learned counsel for the respondent No.3/Insurance Company opposes the submissions advanced on behalf of the appellant and submits that the very involvement of the offending vehicle is doubtful as FIR has been registered after an unexplained delay of 8 days. It is submitted that the accident had taken place on 28.12.2016; whereas FIR No.3 was registered on 05.01.2017. It is further submitted that in the FIR, the number of the offending vehicle has been mentioned as RJ-31-RA-<u>7328</u>; which is also the number of the offending vehicle as mentioned in the Claim Petition. Whereas Challan has been issued against the vehicle bearing registration No. RJ-31-RA-<u>7238</u>. Learned counsel contends that there is no justification given for this discrepancy in the number of the offending vehicle which clearly indicates that the offending vehicle was not involved in the accident in question and was involved as an after-thought by the Police on the asking of the claimant. It is contended that therefore, Claim Petition ought to have been dismissed.

5. Learned counsel further submits that another glaring discrepancy in the case of the claimant is that in the Claim Petition it was pleaded that claimant was an employee at a Kiryana Shop. However, as per the evidence on record, it was found that the appellant was running a small-scale business. It is submitted that therefore, the appellant has filed the Claim Petition under false pretext and was not entitled to compensation. Learned counsel elaborates to submit that the Ld. Tribunal has wrongly taken the future prospect of 25% in case of functional disability of 15%. The claimant has stated that he received a fracture on his left Arm and suffered disability of 30%. The claimant has further stated that he was an employee Longowal Karyana Shop and he also proved the income tax return from 2011-2012, 2012-2013 and 2013-2014. The said ITR returns have been submitted under business category. It is pertinent to mention here that it has not come in evidence of the claimant that he has suffered any future loss due to the said disability. Therefore, future prospect should not have been taken in case of functional disability of 15% assessed by the Ld. Tribunal. Therefore, compensation is liable to be reassessed, modified and reduced in the interest of justice. It is accordingly prayed that the impugned Award be set aside and that the Cross-Appeal be allowed, the Claim Petition of the claimant be dismissed; and the impugned Award be set aside.

7. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail.

8. I find no merit in the submissions advanced by either of the learned counsel.

9. It is the pleaded case of the claimant before the learned Tribunal that prior to the accident, he was working in a Kiryana Shop and was earning Rs.15,000/- per month. The claimant had also pleaded that in the accident in question, he had sustained multiple grievous injuries on his left arm, forehead and other body parts. As per the medical evidence on record, in particular, the evidence of CW5 Dr. Aman Singh, in the accident in question, the appellant had suffered *"open fracture in the left side of humerus ".* CW5 had further deposed that the claimant was admitted in Rajindra Hospital on 29.12.2016; and was operated with external fixator; and was discharged on 27.01.2017. PW2 Dr. Gulzar Mohd. had deposed that the claimant had been admitted in Hospital on 20.02.2017 and was suffering from fracture of shaft of left humer. PW2 stated that on 26.02.2017, the external fixator was removed; whereafter claimant was discharged on 28.02.2017. PW2 Dr. Gulzar Mohd. further stated that the claimant was again admitted in Hospital on 07.04.2017 and was operated upon on 20.04.2017 and internal lock nailing was done; whereafter he was discharged on 27.04.2017. As per CW3 Dr. Harbans Singh, the claimant had suffered permanent disability of 30%. CW3 admitted in his cross-examination that as a result of the said disability, the injured cannot work as labourer or hold hammer or any heavy object.

10. The functional disability of an injured-claimant is to be assessed on the basis of the impediment caused to the injured in discharging his activities prior to the accident. This is so held by the Hon'ble Supreme Court in **Uttar Pradesh Road Transport Corporation v. Vibhor Fialok, (SC) : Law Finder Doc Id # 2751894;** wherein it is held that: -

> *"B. Motor Vehicles Act, 1988 - Section 168 - Percentage of functional disability - Assessment must consider the effect of specific limb disability on the functioning of the whole body - Whole body disability for lower limb disability to be calculated as 1/4th of the limb disability percentage."*

11. In the present case, the claimant had pleaded that prior to the accident, he was an employee in a Kiryana Shop. However, the said assertion of the claimant could not be proved as the claimant failed to examine owner of the Longowal Karyana shop where he was allegedly working.

12. On the contrary, it was proved that the claimant had stated wrong facts and had blatantly misled the Tribunal *inasmuch* as from the income tax returns produced by the claimant, it was proved that the claimant was a small-scale businessman. The claimant had examined Steno Pankaj Soni from the Income Tax Department, who had proved the Income Tax Returns for the year 2011-12 (Ex.C-42); for the year 2012-13 (Ex.C-43) and for the year 2013-14 (Ex.C-44). From the said Income Tax Returns, it was clear that the claimant was running a small-scale business, as the said Income Tax

Returns had been filed under the Business Category. It was in this background that the learned Tribunal had held as follows: -

> *"29….CW-3 Dr. Harbans Singh has assessed the physical disability to the extent of 30%. As per the opinion of doctor, the aforesaid physical disability would cause an impact on the gripping ability of claimant and he would not be able to work as labourer or hold hammer and any heavy object. The income assessed in income tax returns produced by the claimant show that he runs a small scale business. In view of his occupation, I assess the functional disability of claimant at 15%."*

13. I find no error in the same.

14. Furthermore, taking the average of the said three years' Income Tax Returns, learned Tribunal had determined income of the claimant as Rs.1,59,066/- per annum. Age of the claimant was determined to be 33 years. Accordingly, learned Tribunal had made an addition of 25% towards future prospects by relying upon Constitution Bench judgment of Hon'ble Supreme Court in **"National Insurance Company Ltd. VS. Pranay Sethi & Others" Law Finder Doc ID # 918174.** Learned Tribunal had also applied multiplier of 16. Learned Tribunal, accordingly, granted compensation in the following manner: -

Head	**Amount**
Loss of current income	Rs.39,766/-
Loss of future income	Rs.4,77,196/-
Treatment/medicine expenses	Rs.63,862/-
Transportation expenses	Rs.10,000/-
Diet	Rs.10,000/-
Attendant Charges	Rs.9,000/-
Pain and suffering, loss of amenities	Rs.30,000/-
Total	**Rs.6,39,824/-**

15. In the above discussed facts and circumstances of the case, I find no error in the compensation as assessed by the learned Tribunal. Ld. Counsel for the claimant has been unable to show any medical evidence to establish that claimant will face any difficulty in the discharge of his business functions, and duties. As such, **FAO-2318-2020**, filed by the claimant is **dismissed** on grounds of delay as well as on merits.

16. As regards **FAO-5243-2019** filed by the Insurance Company, contention of the insurer is that involvement of the offending vehicle is doubtful in the present case as FIR has been registered after 8 days. The same is liable to be rejected as the above discussion shows that the claimant was admitted in Hospital immediately after the accident from 29.12.2016 till 2 7.1.2017. Thus, delay in registration of the FIR is explained. Given the undisputed and unrebutted fact that claimant was in Hospital, some delay in registration of FIR cannot be held to prove that the involvement of the offending vehicle is doubtful.

17. Second argument of learned counsel for the Insurance Company that involvement of the offending vehicle is also doubtful as in the FIR, as also in the Claim Petition, the number of the offending vehicle is mentioned as RJ-31-RA-7328; whereas challan has been issued against vehicle bearing registration No.RJ-31-RA-7238 is also of no help as difference in one digit in the registration number of the offending vehicle cannot be held to be fatal to the case of the claimant. From the same it

cannot be inferred that the offending vehicle was not involved in the accident in question. Thus, **FAO-5243-2019** filed by the Insurance Company is also **dismissed.**

18. Pending application(s) if any also stand(s) disposed of.

27.01.2026 **(Nidhi Gupta)**
Sunena **Judge**

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