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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1132-2021 (O&M)

Date of Decision : 17.02.2026

Jatinder Kumar

... Appellant

Versus

Gurdeep Kumar and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipul Sharma, Advocate for the appellant.

Service of respondent Nos.1 and 2 dispensed with
vide order dated 21.10.2022.

Mr. Sahej Mahajan, Advocate for
Mr. R.K. Bashamboo, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

CM-8997-CII-2021

1. For the reasons stated in the application, the same is allowed. The delay of 1024 days in filing the present appeal is condoned. However, the injured-appellant shall not be entitled to any interest for the period of delay in filing the appeal.

FAO-1132-2021

2. Present appeal has been filed by the injured-appellant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') vide award dated 27.09.2016.

3. The Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Hospitalization charges, treatment expenses and expenses incurred on medicines	₹19,293/-
2	Special Diet and attendant charges	₹49,000/-
3	Transportation charges	₹7,500/-
4	Pain and sufferings	₹20,000/-
5	Loss of income	₹23,820/-
6	Future loss of income	₹1,14,432/-
7	Loss of amenities of life	₹20,000/-
	Total Compensation	₹2,54,045/-
	Interest	7.5% per annum

4. Learned counsel for the injured-appellant would contend that though he does not challenge the compensation awarded under the head medical bills, however, he has contended that functional disability qua the body has been taken as 7.5% though the disability as stated by PW-2 Dr. Ravi Kumar Preenja was 15%. It is further the contention that since the injured-appellant was working as a mason and due to the disability, which was a fracture right femur, he had stiffness in his right hip and would have difficulty in squatting and sitting cross legged. It was further stated by PW-2 that the disability was permanent in nature. PW-2 had further stated that if the person is working as a *Raj-Mistri* or a mason then it would be treated as 15% functional disability. Learned counsel for the injured-appellant has further contended that the injured-appellant remained admitted in hospital for a period of 19 days and even as per the statement of PW-2 the fracture would take about 3 to 4 months to unite and that even thereafter the injured-appellant would require treatment for removal of the implant. It is thus contended that the compensation awarded under the head loss of income, pain and suffering,

special diet, attendant charges and loss of amenities is on the lower side. Learned counsel for the injured-appellant has referred to a judgment of Hon'ble Supreme Court in case of **Aabid Khan vs. Dinesh & Ors. [2024 (2) RCR (Civil) 617]**

5. *Per contra* learned counsel for respondent No.3-insurance Company would contend that the disability has rightly been assessed as 7.5% since the disability of 15% was qua the limb and therefore functional disability would be 7.5%. It is further the contention that sufficient amount has already been awarded under all the respective heads.

6. Heard.

7. In the present case, PW-2 Dr. Ravi Kumar Preenja, Assistant Professor, Deptt. of Orthopaedics, Government Medical College and Hospital, Sector 32, Chandigarh, who was also a member of Disability Board, had stepped into the witness-box. Certified copy of his statement has been handed over by learned counsel for the injured-appellant. As per the statement of PW-2 the injured-appellant was found to be a post operated case of fracture of the right femur with stiffness of the right hip with difficulty in squatting and sitting cross legged. The disability was stated to be 15% permanent in nature. Said doctor further stated that if the person was working as a *Raj Mistri* or a mason then it is a functional disability as it affects his earning capacity since there was stiffness in his right hip and he would have difficulty in squatting and sitting cross legged. It was further stated by the doctor that it would take about 3 to 4 months for the fracture to unite. Despite lengthy cross-examination of the said witness, nothing could be elicited.

8. Hon'ble Supreme Court in the case of **Aabid Khan** (*supra*) while relying on the judgments in cases of **Raj Kumar vs. Ajay Kumar & Anr.**

[(2011) 1 SCC 343]; Laxman Alias Laxman Mourya vs. Divisional Manager, Oriental Insurance Co. Ltd. & Anr. [(2011) 10 SCC 756] and Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Anr. [(2023) 3 SCC 439] held that when medical evidence was tendered by the claimant, the same ought to be accepted in the absence of any contrary evidence available on the record and held as under :

“10. In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, we are of the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW-5) certified at 17%. In that view of the matter the compensation awarded under the head ‘loss of income’ towards permanent disability deserves to be enhanced by construing the whole body disability at 17%. ”

9. In the present case also though PW-2 had categorically stated that the disability was 15% functional disability, however, the same was treated as 7.5% disability qua the body. Once the doctor had clearly stated that the disability was functional in nature the Tribunal ought to have treated it as 15% disability qua the body. Accordingly, the disability is treated as 15% functional disability.

10. Further, the Tribunal has assessed the income of the injured-appellant as ₹7,940/- per month which in the opinion of this Court is

reasonable and no fault can be found with observations of the Tribunal in this regard and the same is accordingly maintained. Keeping in view the functional disability of the injured-appellant @ 15%, future loss of his income comes out to be ₹2,28,672/-.

11. Further, the amounts awarded under the head ‘pain and suffering’ is enhanced to ₹1,00,000/- keeping in view the fact that the injured-appellant remained admitted in hospital for a period of 19 days and further as per the statement of PW-2 Dr. Ravi Kumar Preenja, the fracture would have taken 3 to 4 months to heal, the amount awarded under the head ‘special diet and attendant charges’ is enhanced to ₹70,000/-. The amount awarded under the head ‘loss of amenities of life’ is enhanced to ₹50,000/-. However, the amounts awarded under the heads ‘medical bills’, ‘loss of income’ and ‘transportation charges’ are maintained.

12. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Hospitalization charges, treatment expenses and expenses incurred on medicines	₹19,293/-
2	Special Diet and attendant charges	₹70,000/-
3	Transportation charges	₹7,500/-
4	Pain and sufferings	₹1,00,000/-
5	Loss of income	₹23,820/-
6	Future loss of income	₹2,28,672/-
7	Loss of amenities of life	₹50,000/-
	Total Compensation	₹4,99,285/-
	Interest	7.5% per annum

13. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5 % per annum from the date of filing of the claim petition till the realization of the entire amount. However,

the claimant-appellants shall not be entitled to any interest for the period of delay in filing the appeal.

14. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

17.02.2026
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO