

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****FAO-4063-2024 (O&M)****Date of decision: 27.05.2026****Saleen****...Appellant(s)****Vs.****Sandeep Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Parminder Singh, Advocate
for the appellant.

NIDHI GUPTA, J.**CM-14889-CII-2024**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 62 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and delay of 62 days in filing the accompanying appeal is condoned.

FAO-4063-2024 (O&M)

The present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.58,964/- awarded by the learned Motor Accident Claims Tribunal, Karnal (for short "the learned Tribunal") vide Award dated 16.03.2024 passed in MACP Case No. 483 dated 01.08.2018 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988.



2. Brief facts of the case are that the Id. Tribunal on the basis of evidence adduced by the parties concluded that the appellant had suffered injuries in a motor vehicular accident that took place on 19.02.2018 at about 03:30 p.m. due to the rash and negligent driving of a Truck bearing registration No. HR-39D-3171 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1; owned by respondent No.2; and insured by respondent No.3. The above said compensation was awarded along with interest @ 8% per annum. All the respondents were held jointly and severally liable to pay the said compensation.

3. Learned counsel for the appellant seeks enhancement of compensation by submitting that prior to the accident, appellant was a labourer and earning Rs.15,000/- p.m. However, due to injuries suffered by him, he has become permanently disabled and is unable to sit, squat and walk properly and unable to do labour work. However, learned Tribunal has ignored all of the above said facts and assessed income of the appellant on the lower side as only Rs.8,498/- p.m. and awarded compensation of only Rs.2,289/- p.m. under the head of loss of earning. It is submitted that even compensation awarded under other heads is also on the lower side and deserves to be enhanced. Compensation on account of permanent disability suffered by the appellant, while operation was carried out is on the lower side and is liable to be enhanced. Even interest should be enhanced from 8% to 12% p.a.

4. It is accordingly prayed that the present Appeal be allowed; and the compensation be enhanced in above terms.



5. No other argument is raised on behalf of the appellant. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

6. Contention of the appellant to the effect that he had suffered permanent disability, is not borne out from the record. No Disability Certificate has been produced by the appellant. Even no Doctor has been examined by the appellant to prove his alleged permanent disability. Thus, the said contention of the appellant is rejected.

7. Further, claim of the appellant that he was a labourer and earning Rs.15,000/- p.m. is also not proved on record. Only a bald statement to this effect was made by the appellant while appearing as PW1 and no evidence whatsoever was adduced to substantiate his said averment. Accordingly, Tribunal had taken income of the deceased as unskilled labourer as Rs.8,498/- p.m. (rounded off) on the basis of relevant Minimum Wage Notification issued by Government of Haryana. I find no error in the same.

8. Further perusal of the record of the case shows that in the accident dated 19.02.2018, appellant had suffered fracture of right femur for which he was operated upon on 21.02.2018. As per the Discharge Summary Ex.P1, appellant had remained hospitalized from 19.02.2018 till 25.02.2018. As such, learned Tribunal had awarded Rs.2,289/- as loss of earning for a period of 7 days when the appellant had remained hospitalized. Appellant had produced Medical Bills/Receipts Ex.P7 to Ex.P13 for a total amount of Rs.13,175/- which was duly reimbursed to



him. Appellant was granted lump sum amount of Rs.5,789/- towards loss of earning including attendant charges. Learned Tribunal has also granted lump sum amount of Rs.40,000/- towards pain, suffering and trauma, loss of amenities et cetera; thereby granting total compensation of Rs.58,964/-. Accordingly, learned Tribunal has calculated the compensation in the following manner: -

Sr. No.	Description/Heads	Amount
1.	Expenses relating to treatment, hospitalization, medicines, transportation, special diet etc.	Rs.13,175/-
2.	Loss of earning including attendant charges during the period of treatment.	Rs.5,789/-
3.	Non Pecuniary Damages i.e. damages for pain, suffering and trauma as a consequence of the injuries, loss of amenities etc.	Rs.40,000/-
4.	Total	Rs.58,964/-

9. It is my view that the aforesaid compensation is just and fair in the facts and circumstances of the case. Nothing whatsoever has been shown to this Court that would merit enhancement of the compensation granted to the appellant. No doubt Chapter-12 of the Act is a beneficial legislation yet, as cautioned by the Hon’ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Hon’ble Supreme Court in “**State of Haryana Vs. Jasbir Kaur**” Law Finder Doc ID # **64043** and “**Divisional Controller K.S.R.T.C. Vs. Mahadeva Shetty and another**” (2003) 7 SCC 197, has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. In “**General**

**Manager, KSRTC Vs. Susamma Thomas & Others” 1994 Volume-II SCC**

176, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

10. Before parting, it may be pointed out that in respect of accident dated 19.02.2018, an FIR No.93 dated 04.03.2018 under Sections 279, 337, 338 of IPC was registered at Police Station Indri on the basis of the statement made by the appellant. Before the Tribunal, the appellant had appeared as PW1 and had supported his case as stated in the Claim Petition to the effect that the appellant had suffered injuries in a motor vehicular accident which was caused due to rash and negligent driving of respondent No.1. With regard to the case set up by the appellant and the evidence led by him in support, the Tribunal in para 3 of the impugned Award has recorded that: -

“....Thus, in his testimony before the Court, PW1 Saleen has fully supported the case of claimant that the accident was caused on account of rash and negligent driving of truck bearing registration no. HR-39D-3171 and respondent No.1 was the driver of offending truck at the time of accident. The witness was subjected to lengthy cross-examination, however he has remained consistent in his testimony and nothing much could be extracted in his cross-examination which could cast a doubt on the veracity of his statement....”

11. Consequentially, Claim Petition of the appellant was allowed and compensation was awarded. It is however to be noted that in the



criminal proceedings emanating from the above said FIR No.93 dated 04.03.2018, respondent No.1 has been acquitted by learned Sub-Divisional Judicial Magistrate, Indri vide judgment dated 04.07.2023 on account of the fact that appellant had failed to identify respondent No.1. Before the Criminal Court, appellant has appeared as PW5. The relevant extract of the said judgment of acquittal dated 04.07.2023 is as follows: -

“PW5 Saleem, complainant and injured in the present case deposed on the lines of his complaint and proved Ex.PW5/A which bears his signature. In his cross-examination, he stated that he has seen the accused first time in the court. He has seen him first time after the accident. His tractor was standing on the left side of the road on the spot. After the accident he was conscious. He did not go to the police station. Police has not recorded his statement at the police station. At the time of superdari he went to police station.

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9. Arguments were advanced by learned APP for the State and learned defence counsel. After listening to arguments of both the sides and after going through the record the court has arrived at a conclusion that prosecution has miserably failed to prove the guilt of the accused. At the forefront, the prosecution was required to establish the identity of the driver of the offending vehicle but identity of accused is not established. The statement of the complainant show that the driver of the offending vehicle was unidentified who fled the spot. The prosecution was required to prove the identity by leading cogent evidence but it failed to do so. The police did not gather any material to show that the accused was the driver on the offending truck and caused the accident; even his identity was also not established through identification parade. It is also



pertinent to mention here that it is nowhere deposed by the complainant PW Saleem that the accused was driving the offending vehicle in a rash and negligent manner. It is also pertinent to mention here that it is not disposed by the complainant that the offending vehicle was being driven in a high speed which would indicate rashness and negligence. It was incumbent upon the prosecution to prove the element of rashness and negligence in the present case. In the absence of the same the offence of rash and negligent act is neither attributed nor proved. In such facts and circumstances prosecution has failed to discharge of its onus."

12. A bare reading of the above facts shows that before the learned Sub-Divisional Judicial Magistrate, Indri, the claimant has turned turtle on his statement made before the Tribunal. No doubt, proceedings under the Act have to be decided on the preponderance of probabilities. However, this Court cannot shut its eyes in an ostrich like manner to the starkly diametrically opposite stance taken by the claimant in the criminal trial. Clearly, no credence can be attributed to the contrary statements made by the claimant side before the learned Tribunal. It is to be seen that the appellant has been held entitled to compensation by the Tribunal only on the basis of statement made by him to the effect that the accident in question had been caused due to the rash and negligent driving of the offending vehicle by the respondent no.1. However, from the above noted facts, it would appear that the claimant side has deposed falsely before the Tribunal only with a view to get the



compensation. It is my view that the said act of the claimant side amounts to perjury.

13. I am supported in my view by most recent judgment of Hon'ble Supreme Court in **Rajamma v. M/s Reliance General Insurance Co. Ltd., (SC) : Law Finder Doc Id # 2784588** decided on 26.09.2025; wherein while upholding that *".....proof of accident in motor accident claims is based on the preponderance of probabilities"*, it has simultaneously been held that *"..... Suspicion on FIR registration and contradictions in witness testimony can lead to dismissal of claims. Testimony of eyewitness deemed unreliable due to contradictions and lack of supporting evidence. FIR and witness statements must be consistent and credible to establish the involvement of the offending vehicle and the negligence of the driver."* Thus, the Hon'ble Supreme Court has categorically enunciated that in case of contradiction in witness testimony, claim petition is liable to be dismissed. In the present case, as noted above, there is distinct contradiction in the case set up by the appellants before the Tribunal, and as projected by him before the learned Magistrate.

14. This Court in **"Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others"** FAO-2231-2014 decided on 03.12.2019, held that:-

*"(6) This Court cannot loose sight of the judgment rendered by this Court in the case of **United India Insurance Company Limited versus Kamla Devi and others 2010(53) RCR (Civil) 651**, wherein it was specifically held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the*



said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury.”

15. This Court in abovesaid judgment in **“United India Insurance Company Limited Vs. Kamla Devi & Others” (P&H) : Law Finder Doc Id # 251230** has held that:

"5. It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal court is not binding on the Tribunal; the non-filing of a FIR is not material; even the fact of involvement of the vehicle as found by the criminal court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come a finding that the particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal court or looked for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that



he ever made any such statement before the criminal court, necessitating the statement made before the criminal court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice."

16. In view of the above discussion, no ground is made out to enhance the compensation. The present Appeal is accordingly **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

27.05.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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