IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

238(2)

Date of decision: 04.05.2026

FAO-7981-2017 (O&M)

Jyoti Bala @ Jyoti Devi & Others

...Appellant(s)

Vs.

Ashok Kumar & Others

...Respondent(s)

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FAO-5338-2017 (O&M)

New India Assurance Co. Ltd.

...Appellant(s)

Vs.

Jyoti Bala @ Jyoti Devi & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sukhdeep Singh, Advocate
for the claimants/appellants in FAO-7981-2017
and respondents No.1 to 3 in FAO-5338-2017.

Mr. Pranab Handa, Advocate for
Mr. Paul S. Saini, Advocate
for appellant/Insurance Company in FAO-5338-2017
and respondent No.3 in FAO-7981-2017.

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NIDHI GUPTA, J.

CM-26381-CII-2017 IN FAO-7981-2017

This is an application under Section 5 of Limitation Act for condonation of delay of 145 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit of appellant No.1, the same is allowed subject to all just exceptions and delay of 145 days in filing the present appeal is condoned.

CM-16708-CII-2017 IN FAO-5338-2017

This is an application under Section 5 of Limitation Act read with Section 151 CPC for condonation of delay of 62 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit of appellant, the same is allowed subject to all just exceptions and delay of 62 days in filing the present appeal is condoned.

FAO-7981-2017

The present appeal has been filed by the claimants seeking enhancement of compensation of Rs.17,11,000/- awarded by Motor Accident Claims Tribunal, Hoshiarpur vide Award dated 07.01.2017 passed in MACT Case No.42 dated 03.11.2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The 3 claimants are the 20-year-old widow, 2-year-old daughter and 65-year-old mother of deceased Vijay Kumar, who was 35 years old at the time of accident.

FAO-5338-2017

The present appeal has been filed by the Insurance Company laying challenge to the Award dated 07.01.2017 passed by learned Tribunal in MACT Case No.42 dated 03.11.2015 filed under Section 166 of the Act by the claimants/respondents No.1 to 3 herein, whereby Claim Petition of the claimants has been allowed and claimants have been awarded compensation of Rs.17,11,000/-.

Both the above cross-appeals are being disposed of by this common order as they arise out of Award dated 07.01.2017; both emanate from the accident dated 05.09.2015; and both appeals are between the same parties; and facts and issues involved in both appeals are identical. For the sake of facility, the facts are being drawn from, and parties are being referred to as per their status in FAO-7981-2017 filed by the claimants.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties concluded that deceased Vijay Kumar had died due to the injuries suffered by him in a motor vehicular accident that took place on 05.09.2015 due to the rash and negligent driving of Bus bearing registration No.PB-07-Q-9777 (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 compensation has been awarded along with interest @ 7.5% per annum. Respondent No.3/Insurance Company was held liable for payment of compensation amount.

3. Learned counsel for the appellants/claimants seeks enhancement of compensation by submitting that income of the deceased has been assessed on the lower side as only Rs.8000/- per month. It is submitted that the claimants had proven on record that deceased was doing the work of Mason and earning Rs.50,000/- per month. This has also been stated by widow of the deceased, who has appeared as AW2. In this regard, learned counsel makes reference to the deposition of the widow of the

deceased who had appeared as AW2 as recorded in Para 11 of the impugned Award. It is further submitted that in any event, income of the deceased ought to have been taken as that of a skilled worker as Rs.8600/- per month.

4. Per contra, learned counsel for the Insurance Company (appellant in connected FAO-5338-2017) vehemently opposes the submissions advanced on behalf of the claimants and submits that the claimants had led no proof whatsoever to prove the alleged income of the deceased. It is submitted that in fact, future prospects have been added on the higher side @ 50%; whereas the same should be 40%. It is further submitted that amounts under the conventional heads have already been granted on the higher side and deserve to be adjusted in accordance with law. It is accordingly prayed that the appeal filed by the Insurance Company be allowed; and that filed by the claimants be dismissed.

5. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find some merit in the submissions advanced on behalf of both the parties.

6. Perusal of record of the case shows that it was the pleaded case of the claimants before the learned Tribunal that prior to the accident, the deceased was working as a Mason and used to take contracts of buildings from which he was earning Rs.50,000/- per month. Although no documentary evidence was produced by the claimants in this regard, however, the claimant No.1/widow of the deceased has appeared as AW2 and has deposed in this regard. The claimants have also examined AW3

Parveen Kumari who has also deposed to the same effect. It is to be remembered that these are unorganised sectors of employment and therefore, often times documentary proof of income is not available with the claimants who are usually uneducated persons. As such, income of the deceased is taken as Rs.8612/- per month as that of a skilled worker on the basis of relevant Minimum Wage Notification.

7. Further, age of the deceased was determined to be 35 years at the time of accident on the basis of his Post-Mortem Report (Ex.A1). As such, an addition of 40% was required to be made towards future prospects. However, the learned Tribunal has erroneously made an addition of 50%. The same is liable to be corrected.

8. As there were three claimants, deduction of 1/3rd has been correctly made. Keeping in view the age of the deceased, multiplier of 16 has been correctly applied. Under the conventional heads, the learned Tribunal has awarded an amount of Rs.1,00,000/- towards loss of consortium to claimant No.1/widow; Rs.50,000/- towards loss of love and affection to claimant No.2/minor daughter and Rs.25,000/- towards funeral expenses. The said amounts are liable to be re-assessed in accordance with law as follows: -

Head	**Awarded by learned Tribunal**	**Re-assessed compensation**
Monthly income	Rs.8000/-	Rs.8612/-
Annual income	Rs.96,000/-	Rs.1,03,344/-
Future prospects	(50%) Rs.48,000/-	(40%) Rs.41,337/-
Total annual income	Rs.1,44,000/-	Rs.1,44,681/-
Deduction	(1/3rd) Rs.48,000/-	(1/3rd) Rs.48,227/-

Annual dependency	Rs.96,000/-	Rs.96,454/-
Multiplier	16	16
Total dependency	Rs.15,36,000/-	Rs.15,43,264/-
Loss of love and affection	Rs.50,000/-	--
Filial/parental consortium @ Rs.40,000/- each	Rs.1,00,000/-	Rs.80,000/-
Spousal consortium		Rs.40,000/-
Loss of estate	--	Rs.15,000/-
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Total	**Rs.17,11,100/-**	**Rs.16,93,264/-**
Interest	7.5% p.a.	7.5% p.a.

9. In view of the above, both the present appeals stand **partly allowed,** in above terms.

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

04.05.2026 **(NIDHI GUPTA)**
Sunena **JUDGE**

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