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

Date of decision : 24.02.2026

FAO No.1936 of 2017 (O&M)

IFFCO Tokio General Insurance Co. Ltd. ....Appellant

Versus

Javed and another ....Respondents

FAO No.6805 of 2018 (O&M)

Javed through his LRs ....Appellant

Versus

Pritpal Singh and another ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Vandana Malhotra, Advocate (through V.C.) and
Ms. Manvi Verma, Advocate
for the appellant in FAO-1936-2017 and
for respondent No.2 in FAO-6805-2018.

Mr. Ashish Gupta, Advocate
for the appellant in FAO-6805 of 2018 and
for respondent No.2 in FAO-1936-2017.

PANKAJ JAIN, J. (ORAL)

CM No.6343-CII of 2017 in FAO No.1936 of 2017

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 159 days in filing the instant appeal.

Mr. Gupta pleads no objection.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 159 days in filing the instant appeal is hereby condoned.

CM No.24068-CII of 2018 in FAO No.6805 of 2018

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 689 days in filing the instant appeal.

Counsel representing non-applicant/respondent No.2 pleads no objection.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 689 days in filing the instant appeal is hereby condoned.

FAO No.1936 of 2017 (O&M)
FAO No.6805 of 2018 (O&M)

These are two cross-appeals are directed against order dated 29.07.2016 passed by Commissioner under Employee's Compensation Act, 1923 (hereinafter referred to as 'the 1923 Act').

2. FAO No.1936 of 2016 is at the behest of the Insurance Company. FAO No.6805 of 2018 is at the behest of the claimants.

3. Both the appellants are primarily aggrieved of the quantum of compensation awarded by the Commissioner.

4. Claim petition was filed under 1923 Act seeking compensation on account of 100% permanent disability suffered by the claimant/Javed in

an accident arising out of and during the course of employment, dated 31.08.2015 while being employed as a cleaner on the insured vehicle. Claimant claimed that he was employed with the owner of the vehicle on a monthly salary of Rs.8,000/- besides diet allowance of Rs.100/- per day.

5. Counsel for the appellant/Insurance Company relies upon notification issued by Government of India, under Section 4(1B) of the 1923 to submit that the minimum wages notified by the Government for the purpose of Section 4 of 1923 Act are Rs.8,000/- per month. Commissioner erred in taking the monthly salary of the claimant as Rs.11,000/-. The monthly income for the purpose of Section 4 of 1923 Act, cannot be taken to be more than Rs.8,000/- as notified by Central Government. She further submits that liability to pay penalty has to be borne by the employer and not by the insurer. She further submits that the 12% interest has to be awarded from 30 days after the date of accident till the date of actual realization and not from the date of accident as awarded by the Commissioner.

6. Counsel for the appellant/claimant on the other hand submits that the applicant has been confined to bed since the date of accident on account of a spinal cord injury, yet nothing has been awarded towards future medical treatment. Mr. Gupta further submits that the liability to pay penalty has to be borne by the insurer and not by the employer.

7. I have heard counsel for the parties and have carefully gone through records of the case.

8. The accident in the present case is dated 31.08.2015. On the said date, Section 4 reads as under:

> *"**4. Amount of compensation.**—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—*
>
> *(a) where death results from the injury -*
>
> *an amount equal to fifty per cent of the monthly wages of the deceased **workman** multiplied by the relevant factor;*
>
> *or*
>
> *an amount of **eighty thousand rupees**, whichever is more;*
>
> *(b) where permanent total disablement results from the injury-*
>
> *an amount equal to sixty per cent of the monthly wages of the injured **workman** multiplied by the relevant factor;*
>
> *or*
>
> *an amount of **ninety thousand rupees**, whichever is more:*
>
> *xxxx xxxx xxxx*
>
> *Explanation I.—For the purposes of clause (a) and clause (b), "relevant factor", in relation to a **workman** means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the **workman** on his last birthday immediately preceding the date on which the compensation fell due;*
>
> ***Explanation II – Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only:***
>
> *(c) where permanent partial disablement results from the injury-*
>
> *(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and*
>
> *(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;*
>
> *Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be*

aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II.—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial results from the injury-

a half-monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the ***workman****, to be paid in accordance with the provisions of sub-section (2).*

(1-A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a ***workman*** *in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such* ***workman*** *in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the* ***workman*** *in accordance with the law of that country.;*

xxxx xxxx xxxx

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day—

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the ***workman*** *is entitled the amount of any payment or allowance which the* ***workman*** *has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and*

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the ***workman*** *before the*

> *accident exceeds half the amount of such wages which he is earning after the accident.*
>
> *Explanation.—Any payment or allowance which the* ***workman*** *has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.*
>
> *xxxx xxxx xxxx*
>
> *(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.*
>
> *(4) If the injury of the* ***workman*** *results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of* ***two thousand and five hundred*** *rupees for payment of the same to the eldest surviving dependant of the* ***workman*** *towards the expenditure of the funeral of such* ***workman*** *or where the* ***workman*** *did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.*
>
> *xxxx xxxx xxxx."*

9. By dint of amendment made in 2009, explanation appended to Section 4(1), stood deleted. Prior to amendment there was a ceiling on the monthly wages to be taken for the purpose of computing compensation which was to abide by the notification issued by the Central Government. By virtue of amendment made in the year 2009, there is no such ceiling.

9.1. The issue was deliberated upon by this Court in detail in the case of 'ICICI Lombard General Insurance Company Ltd. vs. **Manish Kumar and another – FAO No.1437 of 2025** *decided on* 29.05.2025, wherein this Court observed as under:

> "15. In view of above, this Court finds that wherever the employee claiming compensation under 1923 Act, is able to prove his monthly wages and the same is calculable in terms of the structure formulated as contained under Section 5 of 1923 Act, the Commissioner shall award the compensation calculating the actual monthly wages earned by the employee, dehors the notification issued by the Central Government under Section 4(1-B) of 1923 Act. However, wherever the employee is not able to prove his wages in terms of Section 5 of 1923 Act, the notification issued by the Central Government under Section 4(1-B) of 1923 Act needs to be relied upon to fill the gap. The compensation has to be assessed accordingly."

10. The Insurance Company went in appeal before the Supreme Court. The Supreme Court vide order dated 13.10.2025 dismissed the appeal upholding the ratio laid down by this Court.

11. In view of above, this Court finds that the Commissioner rightly included daily diet allowance to compute the actual monthly salary of the claimant and calculated compensation accordingly. Thus, no fault can be found with the compensation computed by the Commissioner.

12 However, counsel for the Insurance Company is right in contending that the interest in terms of Section 4A has to be awarded from 30 days after the date of accident and not from the date of accident. The impugned order is ordered to be modified accordingly.

13. Liability to pay penalty has to be shouldered by respondent No.2 i.e., the employer and not by the insurance company.

14. Penalty is recoverable from the employer / respondent No.2 in terms of ratio of law laid down by Supreme Court in the case of **Ved Prakash Garg vs. Premi Devi, 1997 AIR (SC) 3854**.

15. With the aforesaid two modifications in the impugned order passed by the Commissioner, the appeal preferred by the Insurance Company (FAO No.1936 of 2017) is disposed off.

16. The argument raised by counsel for the claimant w.r.t. future expenses, cannot be accepted in the absence of any evidence. Resultantly, the appeal preferred by the claimant (FAO No.6805 of 2018) is ordered to be dismissed.

17. Pending application, if any, shall also stand disposed off.

18. A copy of this order be kept on the file of other connected case.

February 24, 2026 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No