

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.****FAO (MV) No. 108 of 2014****a/w CMP No. 4616 of 2014****Reserved on : 25.04.2026****Decided on : 30.04.2026**

Pardeep Kumar

...Appellant

Versus

Arun Kumar and others

...Respondents

*Coram****The Hon'ble Mr. Justice Virender Singh, Judge.******Whether approved for reporting?¹ Yes*****For the appellant:****Mr. Lovneesh Kanwar, Senior Advocate, assisted by Mr. Tarun Garla, Advocate.****For the respondents:****None for respondent No. 1.****Ms. Vandana Kumari, Advocate, vice Mr. Naveen K. Bhardwaj, Advocate, for respondent No. 2.****Mr. Jagdish Thakur, Advocate, for respondent No. 3.****Virender Singh, Judge**

Appellant-Pardeep Kumar has filed the present appeal, under Section 173 of the Motor Vehicles Act (hereinafter referred to as 'the M.V. Act'), being dissatisfied with the award dated 30.10.2013, passed by learned Motor

¹ Whether the reporters of Local Papers may be allowed to see the judgment?



Accident Claims Tribunal-II, Hamirpur, District Hamirpur, H.P. (hereinafter referred to as 'the learned MACT'), in MAC Petition No. 22 of 2010, RBT No. 21 of 2013, titled as 'Pardeep Kumar Versus Arun Kumar and others'.

2. By way of the award dated 30.10.2013, the learned MACT has awarded a sum of Rs. 1,16,726/-, along with interest at the rate of 7.5% per annum, from the date of filing of the petition, till the realization of the amount. The litigation expenses have also been quantified at Rs. 5,000/-. Respondents No. 1 and 2 were held liable to pay the amount of compensation by exonerating respondent No. 3 from paying compensation.

3. The present appeal has been filed by the appellant, for enhancement of the amount of compensation awarded to him, by learned MACT.

4. For the sake of convenience, the parties to the present *lis*, are, hereinafter referred to, in the same manner, as were, referred to, by the learned MACT.

5. Brief facts, leading to the filing of the present appeal, may be summed up, as under:-



5.1 Petitioner Pardeep Kumar, has approached the learned MACT, under Section 166 of M.V. Act, seeking compensation of Rs. 5,00,000/-, along with interest at the rate of 12% per annum, on account of injuries/disability suffered/sustained in a road side accident, involving vehicle No. HP55B-7502. The petition has been filed against the respondents, being owner, driver and insurer of vehicle No. HP55B-7502 (hereinafter referred to as 'the offending vehicle').

5.2 According to the petitioner, the accident in question had taken place on 03.01.2010. The petitioner was pillion rider on motorcycle No. HP22A-4793, owned by Jagdish Chand (Jaggu) son of Sh. Rattan Chand. When, they reached near Taran Da-Choa, meanwhile, offending vehicle, being driven by respondent No. 2, came from Nadaun side and hit the motorcycle No. HP22A-4793, due to which, the petitioner sustained injuries. Cause of accident is pleaded as rash and negligent driving of the offending vehicle by respondent No. 2.



5.3 According to the petitioner, after the accident, he was initially taken to the hospital of Dr. Vikas Mandyal at Hamirpur, who is running the hospital under the name and style of Sri Krishna Hospital. Thereafter, he was shifted to Rajinder Parsad Government Medical College and Hospital, Tanda. He was discharged from the hospital on 01.02.2010. The information regarding the accident was given to Police Station Nadaun, where FIR No. 15 of 2010, dated 15.01.2010, under Sections 279, 337 of IPC has been registered against respondent No. 2, driver of the offending vehicle.

5.4 According to the petitioner, due to the injuries, he has become disabled and prior to the accident, he was mason by profession. At the time of accident, his age was 34 years. He has pleaded his income as Rs. 10,000/- per month.

5.5 On the basis of above facts, a prayer has been made to allow the claim petition, as prayed for.

6. When put to notice, claim petition has been contested by the respondents.

7. Respondents No. 1 and 2 have filed the joint reply, in which, they have denied the factum of accident. According



to them, FIR has been wrongly lodged by the petitioner in connivance with owner of motorcycle bearing No. HP22A-4793, however, the accident had taken place due to rash and negligent driving of rider of motorcycle No. HP22A-4793. Rest of the contents have been denied.

8. Insurance company of the offending vehicle i.e. respondent No. 3, has filed its separate reply, taking preliminary objections that the claim petition is not maintainable, as the offending vehicle was not insured with them; the driver of the offending vehicle was not holding a valid and effecting driving license, at the time of accident; and the offending vehicle was being permitted to ply in violation of the terms and conditions of the insurance policy.

8.1 On merits, the insurance company has taken the plea that the offending vehicle was never insured with them, as, there was no compliance of Section 64VB of the Insurance Act, 1938, since, the cheque issued by respondent No. 1 against policy No. OG-09-1208-1812-00000155 was dishonoured and returned back uncleared. Rest of the contents of the claim petition have mainly been denied, for



want of knowledge. Thus, the respondent has prayed for dismissal of the claim petition.

9. The petitioner filed rejoinder to the reply filed by respondents No. 1 and 2, denying the factual position, by virtue of which, the claim petition has been contested and the contents of the claim petition have been re-asserted.

10. From the pleadings of the parties, the following issues were framed by the learned MACT on 15.10.2011:-

1. *Whether the petitioner suffered injuries due to rash and negligent driving of bus No. HP55B-7502 by driver/respondent No. 2, Vinod Kumar, as alleged? OPP*
2. *If issue No. 1 is proved in affirmative, whether petitioner is entitled for compensation, if so, to what amount and from whom? OPP*
3. *Whether the petition is not maintainable in the present form? OPR 1 & 2.*
4. *Whether Bus No. HP55B-7502 was insured with respondent No. 3, as alleged? OPR 1 & 2.*
5. *Whether driver, Vinod Kumar, was not holding valid and effective driving licence at the time of accident as alleged? OPR 3*
6. *Whether the vehicle in question was being plied in violation of the terms and conditions of the insurance policy? OPR 3*
7. *Whether the petition is bad for non-joinder of necessary parties as alleged? OPR 3*
8. *Relief.*

11. Thereafter, the parties to the *lis* were directed to adduce evidence.



12. After hearing the learned counsel appearing for the parties, the learned MACT has awarded the amount of Rs. 1,16,726/-, along with interest at the rate of 7.5% per annum, against respondents No. 1 and 2, by fastening the liability to pay the amount of compensation. Respondents No. 1 and 2 have not filed any appeal or cross-objections against the award.

13. Feeling dissatisfied with the said award, the present appeal has been preferred by the petitioner, seeking enhancement of the amount of compensation, on the ground, that the learned MACT has misread the pleadings and evidence brought on record.

13.1 According to the petitioner, the disability certificate Ext. PW7/B, has wrongly been ignored, whereas, the same has been issued by the competent Board. The learned MACT is stated to have not considered the fact that the petitioner has suffered permanent disability in his right arm, as such, he is entitled for the future loss of income, which has wrongly been denied to him.



13.2 The impugned award has also been challenged on the ground that the learned MACT has wrongly assessed the income of the petitioner as Rs. 5,000/- per month, whereas he has specifically proved that his income was Rs. 10,000/- per month.

14. Along with the appeal, an application (CMP No. 4616/2014) under Order 41 Rule 27 of C.P.C. has also been moved to place on record and prove the disability certificate, issued by the competent authority. In terms of the certificate, dated 04.01.2014, issued by the competent authority, the disability of the petitioner has been assessed to be 25%, permanent in nature.

15. According to the petitioner, the said certificate could not be produced before the learned MACT, as the Board has examined the petitioner for the purpose of assessing the permanent disability, only on 04.01.2014, i.e. after the decision of the claim petition. On the basis of above facts, a prayer has been made to allow the application.

16. The owner has not opted to contest the appeal, whereas, Vinod Kumar, respondent No. 2 (driver), has



supported the award passed by learned MACT and prayed that petitioner is not entitled for any enhancement and the application filed under Order 41 Rule 27 CPC, is not maintainable, as the application does not fulfill the ingredients of Order 41 Rule 27 CPC.

17. On the basis of the above facts, a prayer has been made to dismiss the appeal, as well as, the application.

18. In this case, neither the owner nor the driver has filed the appeal or cross-objections to challenge the award passed by the learned MACT, by virtue of which, the liability has been fastened upon respondents No. 1 and 2, meaning thereby, to the extent of liability, the findings of the learned MACT have attained finality.

19. As stated above, the learned MACT has awarded the sum of Rs. 1,16,726/-, along with interest at the rate of 7.5% per annum, from the date of filing of the petition, till its realization, along with litigation expenses, quantified at Rs. 5,000/-, against respondents No. 1 and 2.

20. The learned MACT has rightly awarded a sum of Rs. 43,726/-, under the head 'expenses relating to treatment



and hospitalization'. The said amount does not require interference by this Court.

21. So far as the amount of compensation under the head 'loss of income and earning capacity' is concerned, the learned MACT has assessed the monthly income of petitioner as Rs. 5,000/- per month under the head 'loss of earning'. The petitioner has pleaded that he is mason by profession and earning Rs. 10,000/- per month. The accident had taken place on 03.01.2010 and the petitioner, at the relevant time, was working in unorganized sector. The petitioner, on oath, has deposed that he was earning Rs. 10,000/- per month.

22. Interestingly, in the cross-examination, even, suggestion has not been put to the petitioner that he was not earning Rs. 10,000/- per month by working as a mason. When, a factual position, which, has been asserted by the witness in the examination-in-chief, is not controverted by the respondents, even, by giving a suggestion to him, the same amounts to admission on the part of the respondents.

23. Even, in the claim petition, in para No. 6, the petitioner has pleaded his income as Rs. 10,000/- per month.



The contents of the said para have evasively been denied by respondents No. 1 and 2, in their reply. Evasive denial amounts to admission, as, respondents No. 1 and 2 were not under any disability at the relevant time.

24. In view of the above, this Court is of the view that the arguments of learned counsel appearing for respondent No. 2, qua the fact that the income of the petitioner, in the absence of any documentary evidence, is to be taken at the rate of Minimum Wages Act, is not liable to be accepted, as it is not the case of no evidence, as the petitioner, on oath, has deposed that he was earning Rs. 10,000/- per month by working as a mason. Statement on oath falls within the definition of evidence. As such, the learned MACT has fallen into error by assessing the monthly income of the petitioner as Rs. 5,000/- per month and the same is required to be taken as Rs. 10,000/- per month.

25. Taking into account the period of hospitalization for about one month and considering the nature of the injuries, the petitioner might have taken atleast five months for convalescence, as such, he could not attribute anything to



his family for about six months, for which, he is entitled to Rs. 10,000/- x 6 = Rs. 60,000/-, under the head “loss of income”.

26. As regards, loss of future earnings, on account of permanent disability is concerned, the learned MACT, in the present case, has not awarded anything under the head ‘Loss of earning capacity’. The same has been declined to the petitioner on the ground that the disability certificate Ext. PW7/B, is not qua permanent disability. The petitioner by way of the application under Order 41 Rule 27 CPC has produced the disability certificate. The said document is required to be taken into consideration, as the permanent disability has been assessed by the Board, after the decision of the claim petition by the learned MACT, as such, the application under Order 41 Rule 27 CPC is liable to be allowed, as the proceedings under the M.V. Act are summary in nature, where, the liability of tort feisor is to be fixed on the preponderance of probabilities.

27. Moreover, the permanent disability has been assessed on 04.01.2014, then, how the petitioner can be



expected to produce the same before the learned MACT, at the time of decision, or prior to it. Consequently, application under Order 41 Rule 27 CPC is allowed. The document is allowed to be taken on record. Document is exhibited as Ext. P-X.

28. The petitioner has suffered the disability of 25%, permanent in nature. The disability is stated to be locomotor impaired i.e. disability is a significant restriction in the movement of limbs (arms/legs) or a bodily function, often caused by musculoskeletal or nervous system issues. It affects a person's ability to walk, stand, or grasp, commonly resulting from Cerebral Palsy, accidents, or illness and often requires assistive devices.

29. Considering the said disability, viz-a-viz, the nature of the profession of the petitioner, i.e. mason, this Court is of the view that the said disability can be said to be 50%, functional disability of the petitioner. Although, the same is stated to be 25%, in the certificate Ext. P-X, but, keeping in view the said disability in relation to the petitioner, who is mason by profession, the same can be said to be 50%,



as with this disability, the petitioner cannot work as mason. His income has been held to be Rs. 10,000/- per month and his age at the relevant time was about 34 years. He was working in private sector, as such, 40% amount is required to be added on account of his future prospects. Had he not been suffered with disability, his future income would be Rs. 14,000/- and considering the functional disability, which has been assessed by this Court as 50%, his monthly loss of earning capacity comes to Rs. 7,000/- per month or to say Rs. 84,000/- per annum (Rs. 7,000/- x 12).

30. Keeping in view the age of the petitioner, multiplier of 16 is to be applied, in order to assess the loss of earning capacity. Thus the loss of earning capacity comes to Rs. 13,44,000/- (Rs. 84,000/- x 16).

31. Under the head "Miscellaneous expenses", the learned MACT has awarded a sum of Rs. 10,000/-, on account of transportation charges, attendant charges etc. Considering the period of hospitalization and convalescence, which is held to be six months, this Court is of the view that the petitioner might have taken the special diet or might have



required the assistance of attendant, for doing daily pursuits, for which, he is entitled to Rs. 3600/-, under the head 'expenses on special diet' and for the attendant charges, petitioner is held entitled for a sum of Rs. 24,000/-. Thus, the petitioner is entitled for a sum of Rs. 27,600/- (Rs. 3,600/- + Rs. 24,000/-).

NON PECUNIARY DAMAGES:

32. So far as the compensation under the head 'Pain and sufferings' is concerned, the period of hospitalization is held to be one month and during that period, he was operated upon. The said period must be traumatic and painful for the petitioner, for which, he is held entitled to a sum of Rs. 60,000/-.

33. Under the head 'Loss of enjoyment of life', the period of hospitalization is held to be one month and he might have taken five months for convalescence, during which period, he could not enjoy his life like a normal human being, for which, he is held entitled for a sum of Rs. 1,00,000/-. The factum of disability is not taken into consideration, while assessing the compensation under the head "loss of



enjoyment' as the same has already been taken under the head "loss of earning capacity".

34. Thus, the petitioner is held entitled for a sum of Rs. 43,726/- + Rs. 60,000/- + Rs. 13,44,000/- + Rs. 27,600/- + Rs. 60,000/- + Rs. 1,00,000/- = Rs. 16,35,326/-.

35. In view of the above discussion, this Court is of the view that the amount of compensation is liable to be enhanced from Rs. 1,16,726/- to Rs. 16,35,326/-, along with interest, at the rate of 7.5% per annum, from the date of filing of the petition, till the realization of the amount. The respondents No. 1 and 2 are liable to pay the amount jointly and severally.

36. However, keeping in view the facts and circumstances, there shall be no order so as to costs.

37. Memo of costs be prepared.

38. Pending application(s), if any, are also disposed of.
Record be sent back.

30th April, 2026
(Pranod Kumar)

(Virender Singh)
Judge