

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****FAO-1860-2025 (O&M)
Date of decision: 21.04.2026****Ajay Kumar****...Appellant(s)****Vs.****Pawan Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Kuldeep Jhanjhariya, Advocate
for the appellant.*********NIDHI GUPTA, J.****CM-5830-CII-2025**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 139 days in refiling the accompanying appeal

2. The only reason cited by learned counsel for the applicant/appellants in the abovesaid application for condonation of 139 days delay in refiling the appeal is as under:-

"2. That the present appeal had been filed before this Hon'ble court on 09.09.2024 but thereafter certain objections were raised by the Registry of this Hon'ble Court on 13.09.2024. After receiving back, the paper book from the registry of this Hon'ble Court the brief of the present case got misplaced by the clerk during the shifting the office of undersigned counsel.

3. That while searching for some other documents, the paper book was found to the clerk of undersigned counsel. Thereafter, without any further delay the undersigned counsel is filing the present appeal before this Hon'ble Court, seeking therein an



unconditional apology from this Hon'ble Court with a prayer to take precaution in the future."

3. The said reason is vague and does not constitute sufficient cause to condone inordinate delay of 139 days in refiling the present appeal. No details have been given as to when the file was lost, and when it was retrieved. Accordingly, the present application stands **dismissed**.

CM-5831-CII-2025

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 833 days in filing the accompanying appeal.

2. Ld. counsel for the applicant/appellant submits that delay of 833 days in filing the present appeal has occurred on account of the reasons as given in para 3,4 and 5 of the present application, which read as under: -

"3. That the present applicant-appellant is a poor person and rustic villager, the appellant is not well versed with the intricacies of legal procedure involved in filing present appeal.

4. That pertinently the impugned award dated 10.03.2021 was passed when the Covid-19 pandemic was prevailing in the whole world. When some relaxations were given then the appellant had contacted trial court counsel to refer him an advocate who can file an appeal against the impugned award in the High Court and accordingly the trial court counsel referred the name of an advocate who was practicing in this Hon'ble Court and consequently the appellant engaged that counsel to file the appeal and he was told by the said counsel that it would take at least 4-5 years to get the appeal decided.

5. That thereafter, when the appellant tried to contact the counsel of this Hon'ble Court then the appellant was shocked



when it came to his knowledge that the counsel he had hired died during the Covid-19 pandemic and he has not even filed the appeal.”

3. I find no merit in the above said contention of the applicant. First of all, on a direct Court query, learned counsel for the applicant has been unable to inform this Court as to when compensation amount of Rs.55,513/- was released to the applicant. Furthermore, Covid was well over in the year 2022; whereas the present appeal has been filed only on 11.03.2025. Therefore, no cogent explanation has been given or sufficient cause shown for the delay in filing the appeal.

4. It is cardinal principle of law that delay of each day has to be explained. In this regard, reference may be made to a recent judgment of the Hon'ble Supreme Court in **Civil Appeal No. 11794 of 2025** titled as **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666**, wherein it is held that each day's delay has to be explained in a mathematical manner which has not been done by the applicant-appellant. No cogent reason or plausible explanation has been furnished by the applicant for condonation of such an inordinate and unexplained delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

5. As such, no ground is made out for condoning inordinate delay of 833 days. Present application accordingly stands **dismissed**.

**CM-5832-CII-2025**

Prayer in the present Application under Order 41 Rule 27 CPC read with section 151 CPC is for allowing the appellant to lead additional evidence and place on record Disability Certificate and Unique Disability ID Card as Annexures A-1 & A-2 respectively.

2. It is *inter alia* submitted by learned counsel for the applicant that vide the Disability Certificate Annexure A-1 dated 03.06.2023, it has been certified that the applicant has suffered 60% permanent disability. It is accordingly submitted that the said Disability Certificate and Unique Disability ID card be taken on record as the same are essential for the proper and just decision of the case.

3. Heard.

4. I find no merit in the aforesaid submissions advanced on the behalf of the applicant. In the present case, date of accident is 06.08.2017. Perusal of the impugned Award dated 10.03.2021 shows that in the same, there is no mention whatsoever of any permanent disability having been suffered by the applicant. Even a perusal of the Claim Petition shows that all that has been pleaded by the applicant was that in the accident dated 06.08.2017, applicant had “..... *sustained bodily injuries including multiple fractures.*”. Consequentially, there is nothing on record to indicate that permanent disability, if any, suffered by the applicant, was in respect of accident dated 06.08.2017. Moreover, they said disability certificate now sought to be produced by the appellant-Applicant has not been proved in accordance with law. As such, it cannot be relied upon.



5. Even further, no reasons have been given by the applicant for not producing Disability Certificate and Unique Disability ID Card before the Tribunal. The Hon'ble Supreme Court in **CA 16899 of 1996 "Karnataka Board of Wakf Vs. Government of India"** has categorically held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence before the Court below.

6. Reference may also be made to judgment of the Hon'ble Supreme Court in **C.A. No.10195 of 2013 titled as "Govt. of Karnataka and Another Vs. K.C. Subramanya & Others"** wherein Their Lordships have held as follows: -

"6.On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

7. It is established legal position that provision of Order 41 Rule 27 CPC cannot be used to fill up lacuna in case. In this regard, reference is made



to pronouncement of Hon'ble Supreme Court in ***N. Kamalam (dead) and another Vs. Ayyasamy and Another (2001) 7 SCC 503***, wherein it is held that:

"The provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the Court of Appeal – It does not authorize any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the Appellate Court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way."

8. It is thus, clear that intent of the said provision is not to permit party/applicant to patch up weak parts of his case and to fill up omissions in appeal. In the present case, it is a clear attempt of applicant to fill up gaps and lacunae in his evidence. As per law, applicant cannot be permitted to do so.

9. In view of the above, present application stands **dismissed**.

FAO-1860-2025 (O&M)

The present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.55,513/- awarded by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short "the learned Tribunal") vide Award dated 10.03.2021 passed in MACP Case No. 395 dated 01.11.20117 filed under Section 166 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 06.08.2017 at about



11:30 p.m. due to the rash and negligent driving of a Truck/Canter bearing registration No. HR-45-B-6087 (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 @ 7.5% per annum. Respondent No.3-Insurance Company was directed to pay the amount of compensation at the first instance. However, respondent No.3-Insurance Company was given right to recover the same from respondents No.1 and 2 being the driver and owner of the offending vehicle as respondent No.1 was not holding valid driving license.

3. Learned counsel for the appellant seeks enhancement of compensation by submitting that in passing the impugned Award, learned Tribunal has failed to take into account the 60% permanent disability suffered by the applicant/appellant in the accident in question. It is submitted that the appellant requires a stick to walk and due to injuries appellant cannot stand for long time meaning thereby, appellant has suffered permanent functional disability to the tune of 100%. It is contended that the appellant is a young man with the whole career ahead of him and was only 22 years old at the time of accident. Thus, in these circumstances, functional disability of the appellant ought to be considered as 100%. Therefore, amount of Rs.20,000/- awarded by learned Tribunal on account of pain and suffering is also on the lower side and is liable to be enhanced.

4. It is contended that even medical expenses have been awarded on the lower side. Learned Tribunal also ought to have been awarded future



medical expenses. Attendant charges of Rs.5,000/- are also on the lower side. Amount for special diet is also on the lower side. Meager amount of Rs.5,000/- has been awarded for transportation. Ld. Tribunal ought to have taken loss of income for 41 days instead of 30 days. 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. Perusal of the record of the case shows that in the Claim Petition, the appellant has pleaded that in the accident dated 06.08.2017, appellant had "*Sustained bodily injuries including multiple fractures.*". To prove his case, appellant himself had appeared as PW1. Deposition of the appellant as recorded by learned Tribunal in para 12 of the impugned Award reads as follows: -

"ISSUE NO.1:

12. Onus to prove this issue is on the petitioner-claimant. In order to prove this issue, the petitioner-claimant himself appeared as PW1 and in his affidavit Ex. PW1/A, he has deposed that on 06.8.2017, he was the pillion rider on the motor cycle no. HR-71-C-8146 being driven by his uncle, namely, Jai Pal and they both were on their way to Gulab Nagar, Jagadhri to see one of their relatives. In that process, at about 11:30 PM when they reached near Gulab Nagar turn on Chhachhrauli-Jagadhri road, then, a truck/canter bearing registration no. HR-45-B-6087, loaded with chickens, being driven by its driver i.e. respondent no. 1 at high speed and also



in a rash, negligent and zig-zag manner, came from the side of Jagadhri and hit their motor cycle. Due to the impact, both the motor cyclists along with motor cycle fell down on the road and sustained multiple injuries on their persons. He sustained bodily injuries including multiple fractures. The offending canter also turned turtle. He was evacuated to civil hospital, Yamuna Nagar where he underwent medical treatment for many days. He has further deposed that on the basis of his statement FIR No. 1220 under sections 279, 337, 338 IPC in respect of the accident in question was registered in Police Station City Jagadhri on 10.8.2017. He has further deposed that earlier respondent no. 1 was trying to compromise the matter, but, subsequently backed out therefrom and ultimately, FIR was registered with delay of few days. He has further deposed that after discharge from civil hospital, Yamuna Nagar, he also underwent medical treatment from M.M. Medical College & Hospital, Mullana (Ambala). He has further deposed that he was aged about 22 years at the time of accident and prior to the accident, he was earning Rs. 50,000/- by running a general shop in his village. He has further deposed that that the injuries sustained in the accident led him permanently disabled. He has further deposed that the accident in question took place due to the rash and negligent driving of truck/canter no. HR-45-B-6087, which was being driven by the respondent no. 1."

7. To prove his case, appellant had placed on record Discharge Summary Mark A as per which appellant was hospitalized in MLGH, Yamuna Nagar on 06.08.2017; MLR Ex.P6 as per which it was a case of roadside accident. Appellant had also examined PW4 Dr. Anurag Gupta,



Medical Officer, Civil Hospital, Yamuna Nagar who had proved the aforesaid documents. Appellant had also produced medical bills Ex.P1 and Ex.P2; which were proved by PW3 Amit Kumar from Yadav Surgical, Yamuna Nagar. Appellant had also produced other medical bills Mark C to Mark J which were not formally proved by examining any witness. As per said bills appellant had spent Rs.14,513/- on his treatment and medicines which were duly reimbursed by learned Tribunal. Keeping in view the above facts, learned Tribunal had awarded compensation in the following manner:

INJURY CASE

Period of Hospitalization (i) w.e.f. 06.8.2017 to 16.9.2017
in MLGH, Yamuna Nagar
(as per discharge summary Mark A)

Heads of claim

Sr.No.	(Amount Rs.)
1.Medical expenses	14,513/-
2.(a) attendant charges	5,000/-
(b) special diet	5,000/-
(c)transportation	5,000/-
4.Mental/physical pain and suffering on account of fracture.	20,000/-
5. Loss of income for 30 days	6,000/-
Total	Rs. 55,513/-

8. Thus, from a perusal of the above said evidence, it is clear that there is not one word in the entire record before the learned Tribunal regarding any permanent disability having been suffered by the appellant. Even the appellant has examined no Doctor to prove any alleged disability. No disability certificate has been produced by the appellant before the



Tribunal. Before this Court, appellant has suddenly produced Disability Certificate dated 03.06.2023 issued by “Medical Authority, Yamuna Nagar Haryana”. No reasons whatsoever are forthcoming from the appellant as to why no evidence was led by the appellant before the learned Tribunal to prove his alleged physical disability. Consequentially, the case now sought to be put forth by the appellant that he has suffered disability of 60% in the accident dated 06.08.2017 does not seem to be at all believable. This is more so as in the Claim Petition, appellant has not even provided any details of any specific injuries suffered by him. Even from evidence of PW4 Dr. Anurag Gupta, there is no mention of the specific injuries suffered by the appellant, let alone any disability. It is consequentially my view that by no stretch of the imagination, can it be held that the appellant had suffered any physical disability in the accident dated 06.08.2017.

9. Furthermore, in respect of the accident dated 06.08.2017; the impugned Award was passed on 10.03.2021; whereas present disability certificate is dated 03.06.2023. Therefore, there is nothing whatsoever on record to indicate that the disability certificate dated 03.06.2023 is in any manner connected with the accident dated 06.08.2017.

10. Medical expenses have been reimbursed to the appellant as per the medical bills produced. It is my view that in the facts and circumstances of the case, learned Tribunal has awarded generous compensation under the various heads of attendant charges, special diet, transportation et cetera, even though no bill in this regard has been



produced by the appellant. Thus, no ground is made out for enhancement of compensation.

11. My aforesaid view is further strengthened from the fact that in respect of the accident dated 06.08.2017, an FIR No. 1220 dated 10.08.2017 under Sections 279, 337 and 338 IPC was registered at Police Station City Jagadhri on the basis of the statement made by the appellant Ajay Kumar. In the said FIR respondent No.1/Pawan Kumar has been acquitted by the learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, vide judgment dated 19.04.2023 on account of the fact that Ajay Kumar while appearing as PW4 and his uncle Jai Pal while appearing as PW5 have both turned hostile. The relevant findings of learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri as contained in judgment dated 19.04.2023 read as under: -

“9. Arguments have been heard. After hearing the arguments advanced by learned counsel for both the parties and after perusing the case file carefully, this Court is of the considered opinion that the prosecution has miserably failed to bring home the guilt of accused beyond the shadow of reasonable doubt. The prosecution has examined as many as seven witnesses in all. PW4/complainant and PW5/injured/eyewitness were the star witnesses in the present case, but they failed to identify the accused as perpetrator of the offence in question and failed to identify the vehicle involved in the present accident as offending vehicle. No doubt, their lengthy cross-examination was conducted by learned APP for State, but he could not succeed in extracting even a single incriminating word, against the accused, from the mouths of these witnesses. As such, the said



witnesses showed their ignorance, to identify the accused, present in the Court, as perpetrator of the offence in question. Though, the prosecution had examined the doctor as well as official witnesses, but they are not eye witnesses to the incident in question and came into picture after the alleged incident and hence, their testimonies are also not helpful, to prove the guilt of accused in the instant case. Thus, the prosecution has failed to prove the guilt of accused beyond the shadow of reasonable doubt.”

12. A bare reading of the above facts shows that before the learned JMIC, the claimant side has turned turtle on its previous 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's side in the criminal trial. Thus, 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 on the basis of statement made by the appellant and eyewitness Jai Pal 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 he said act of the claimant side amounts to perjury.



13. I am supported in my view by a judgment of this Court in “**Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others**” FAO-2231-2014 decided on 03.12.2019, wherein it is 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.”*

14. 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."

15. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. Definitely, no case is made out for enhancement of compensation.

16. Thus, the present Appeal is accordingly **dismissed** on merits, as well as on grounds of delay.

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

21.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No