IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 24th OF MARCH, 2025

MISC. APPEAL No. 553 of 2005

DEVENDRA SINGH PARIHAR

Versus

MANMOHAN SINGH RAJPOOT AND ORS.

Appearance:

Shri Bhagwan Raj Pandey – Advocate for appellant.

Shri Naresh Singh Tomar- Advocate for respondent No.3.

ORDER

This miscellaneous appeal, under Section 173 of the Motor Vehicles Act, has been filed against the Award dated 5.1.2005 passed by First Additional Motor Accident Claim Tribunal, Vidisha in Claim Case No. 81/2004.

2. Insurance Company has filed cross-objection, thereby challenging the very factum of accident. Delay in filing cross-objection has already been condoned by a co-ordinate Bench of this Court by order dated 03-03-2025.

3. Before considering the question of enhancement of compensation amount, this Court would like to consider the grounds raised in the cross-objection. Two grounds have been raised - (i) FIR was lodged after two months of the accident, therefore the offending vehicle was wrongly involved; and (ii) at the time of

accident, the driver of the offending vehicle was not having a valid and effective licence.

4. It is the case of the appellant that on 21/6/2003 at about 7 p.m., he was going along with his friend Brijesh Yadav on his Motorcycle bearing registration No. MP04-BA-613. When they reached near Village Bagrod, the driver of offending Maruti Van bearing registration No. MP04-H-0706 dashed the handle of Motorcycle of appellant by driving the vehicle in a rash and negligent manner. As a result, appellant as well as his friend Brijesh Yadav were thrown on the ground. Appellant suffered fracture of his left hand and according to him, his left hand got separated from his elbow. He also suffered injuries on his leg. Brijesh Yadav also suffered multiple injuries. Thereafter, respondent No.1 stopped the Maruti Van and dropped the injured persons in front of PHC, Sironj and ran away. From there, the appellant was referred to Govt. Hospital, Vidisha and thereafter he was shifted to Chiranjeevi Hospital and later, FIR was lodged at Police Station, Sironj.

Whether delay in lodging FIR can be a ground to disbelieve the accident or not ?

5. The incident took place on 21.6.2003 whereas the FIR was registered on 02.09.2003. In the FIR, it is mentioned that after the accident, the appellant was hospitalized and was under treatment, therefore there was a delay in lodging the FIR.

6. Claim cases are to be decided on the basis of evidence led before the Claims Tribunal and not purely on the basis of documents of criminal cases. Even otherwise, every delay in lodging the FIR is not sufficient to throw away the case.

7. The Supreme Court in the case of **Sunita and others Vs. Rajasthan State Road Transport Corporation and others** reported in **(2020) 13 SCC 486** has held as under:

"**21.** We have no hesitation in observing that such a hypertechnical and trivial approach of the High Court cannot be sustained in a case for compensation under the Act, in connection with a motor vehicle accident resulting in the death of a family member. Recently, in *Mangla Ram* v. *Oriental Insurance Co. Ltd.* [*Mangla Ram* v. *Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819] (to which one of us, Khanwilkar, J. was a party), this Court has restated the position as to the approach to be adopted in accident claim cases. In that case, the Court was dealing with a case of an accident between a motorcycle and a jeep, where the Tribunal had relied upon the FIR and charge-sheet, as well as the accompanying statements of the complainant and witnesses, to opine that the police records confirmed the occurrence of an accident and also the identity of the offending jeep but the High Court had overturned [*Pratap Singh* v. *Mangla Ram*, 2017 SCC OnLine Raj 3765] that finding inter alia on the ground that the oral evidence supporting such a finding had been discarded by the Tribunal itself and that reliance solely on the document forming part of the police record was insufficient to arrive at such a finding. Disapproving that approach, this Court, after adverting to multitude of cases under the Act, noted as follows: (*Mangla Ram case* [*Mangla Ram* v. *Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819] , SCC pp. 667-71, paras 22-25)

> "*22.* The question is: Whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in *Bimla Devi* [*Bimla Devi* v. *Himachal RTC*, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] noted the defence of the driver and conductor of the bus which inter alia was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In paras 11-15, the Court observed thus: (SCC pp. 533-34)
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> > '*11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties;*

its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition.

12. The deceased was a constable. Death took place near a police station. The post-mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of the constable had taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus-stand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.

14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions

of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.'

(emphasis supplied)

The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside.

23. Following the enunciation in Bimla Devi case [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] , this Court in Parmeshwari v. Amir Chand [Parmeshwari v. Amir Chand, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court [Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302] on the ground that nobody came from the office of the SSP to prove the complaint. The Court appreciated the testimony of the eyewitnesses in paras 12 & 13 and observed thus: (Parmeshwari case [Parmeshwari v. Amir Chand, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] , SCC p. 638)

'*12*. The other ground on which the High Court dismissed [Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302] the case was by way of disbelieving the testimony

> of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.
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> *13*. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is 'a device to grab money from the insurance company'. This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. …'

24. It will be useful to advert to the dictum in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457 : 1980 SCC (Cri) 774] , wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus: (SCC pp. 458-59)

> '*3*. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent

> victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.'

25. In Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof

beyond reasonable doubt could not have been applied as noted in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] . In paras 8 & 9 of the reported decision, the dictum in United India Insurance Co. Ltd. v. Shila Datta [United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] , has been adverted to as under: (Dulcina Fernandes case [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , SCC p. 650)

> '*8*. In United India Insurance Co. Ltd. v. Shila Datta [United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)
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> > "*10*. … (*ii*) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.
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> > (*v*) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …
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> > (*vi*) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."
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> *9*. The following further observation available in para 10 of the Report would require specific note: (Shila Datta case [United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] , SCC p. 519)

> "*10.* … We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."'
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> In para 10 of Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13], the Court opined that non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability."

22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

8. The Supreme Court in the case of **Ravi v. Badrinarayan** reported in **(2011) 4 SCC 693** has held as under:-

> "17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.
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> 18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should

also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

9. The Supreme Court in the case of **Surendra Kumar Bhilawe v. New India Assurance Co. Ltd.** reported in **(2020) 18 SCC 224** has held as under:-

"50. The FIR was lodged within three days of the accident. In the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatised driver to lodge an FIR, cannot defeat the legitimate claim of the insured. Of course in our view, there was no delay at all in lodging the FIR. In case of a serious accident in course of inter-State transportation of goods, delay of 20 days in lodging a claim is also no delay at all. It is nobody's case that the claim application filed by the appellant was time-barred. Moreover, the insurer had, in any case, duly sent its Surveyors/Assessors to assess the loss. The claim of the appellant could not have, in this case, been resisted, either on the ground of delay in lodging the FIR, or on the ground of delay in lodging an accident information report, or on the ground of delay in making a claim.

51. In any case, as held by this Court in Om Prakash v. Reliance General Insurance [Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724 : (2017) 4 SCC (Civ) 759] delay in intimation of accident, or

submission of documents due to unavoidable circumstances, should not bar settlement of genuine claims."

10. The appellant was cross-examined by the Insurance Company. In the cross-examination, it was admitted by the appellant that FIR was lodged on 02.09.2003. It was explained by the appellant that since he was advised bed rest, therefore, there was a delay in lodging FIR. However, counsel for respondent No.3 (Insurance Company) tried to bring an omission in the FIR to the notice of the appellant with regard to the stand that bed rest was advised. It was replied by the appellant that he did not recollect whether that fact was disclosed at the time of lodging of FIR or not. The FIR was lodged on the basis of written complaint made by appellant, therefore, it is clear that appellant had not disclosed that since he was advised bed rest, therefore, there is a delay in lodging FIR.

Now the only question for consideration is as to whether the appellant has given a plausible explanation for delay in lodging FIR or not?

11. Discharge from hospital does not mean that a person has recovered completely and is in a position to perform his work as he was doing prior to the accident. Therefore, the date of discharge cannot be treated as a cut-off date for adjudicating whether FIR was lodged belatedly or not. The nature of injuries, pace of recovery, etc., are also required to be considered to find out whether there was delay in lodging FIR or not. Although appellant was cross-examined in detail with regard to delay in lodging FIR, but looking at the nature of injuries sustained by the appellant and the nature of weakness he must have faced, this Court is of the considered opinion that delay in lodging FIR was plausibly explained by the appellant. Accordingly, it is held that merely because FIR was lodged belatedly on 02.09.2003, it cannot be said that the offending vehicle was deliberately involved in order to claim compensation.

Whether the driver of offending vehicle was having valid licence or

not ?

12. The owner and driver of the vehicle were proceeded *ex parte*. However, Insurance Company has examined Amit Kumar Srivastava (DW-2) to prove the reply received from the concerned RTO to show the details of the driving licence. According to this witness, the driving licence of respondent No.1 was filed in a criminal case, which was got verified by moving a necessary application in the office of RTO, Vidisha, and as per the information (Ex.D/2), the name of the father of licence-holder was Balloo Singh, whereas the name of respondent No.1 is Manmohan Singh, son of Bapu Singh. Therefore, it is submitted that since the appellant had relied upon the driving licence which was issued in favour of respondent No.1 (Manmohan Singh, son of Bapu Singh) whereas it was issued in favour of Manmohan Singh, son of Balloo Singh, thus the driver of the offending vehicle was not having valid driving licence.

13. Considered the submissions made by counsel for the Insurance Company.

14. The police, after completing investigation, had collected the driving licence of the driver of the offending vehicle. As per cause title, the name of the father of respondent No.1 is Bapu Singh, whereas from the record, it appears that the name of the father of the licence holder has been mentioned as Balloo Singh. There is a slight distinction between the name of the father of the licence holder. If the name of the father of the driver of the offending vehicle is Bapu Singh, then its spelling in English would be "Bapoo" or "Bapu", whereas in the record of RTO, the name of the father of the driver of the offending vehicle is mentioned as "Balloo" Singh. Whether it was a bona fide mistake committed by an employee posted in the office of RTO or Balloo Singh and Bapu Singh are two different persons should have been clarified by the Insurance Company itself by obtaining a copy of the application for grant of licence. If the driver of the offending vehicle had applied for a licence by disclosing his father's name as Bapu Singh and due to a mistake

committed by an employee posted in the RTO, the name of the father of the driver was mentioned as Balloo Singh, then it cannot be said that the driver was someone else. Therefore, in absence of further clarification by the Insurance Company, it is held that slight distinction in the names of the father of the driver of the offending vehicle would not make any difference and it is held that the mistake in the name of the father was due to mis-description by the RTO employees.

15. Accordingly, this Court is of the considered opinion that no case is made out by the Insurance Company to interfere with the findings of accident and liability given by the Claims Tribunal.

16. Accordingly, the cross-objection filed by the Insurance Company is hereby dismissed.

Whether the compensation amount is liable to be enhanced or not?

15. Solitary ground was raised by counsel for appellant that since appellant has suffered multiple injury and his left hand was completely separated from the elbow and appellant was operated upon by applying screws etc., therefore, permanent disability of 33%, as assessed by the Claims Tribunal, is wrong and in fact, appellant has lost the working capacity of left hand completely.

16. Appellant has examined Dr, K.K Verma (PW3), who has issued permanent disabilities certificate (Ex.P/56). The doctor was examined by appellant himself who had assessed that permanent disability of left hand of appellant was 33% . In paragraph 4 of his cross examination he has specifically clarified that permanent disability of 33% is not a whole body disability but it is only with regard to left hand. Once appellant himself has relied upon the certificate issued by doctor and the doctor who was examined by appellant himself has stated that appellant has suffered permanent disability of 33% which is only confined to his left hand and not whole body, therefore, this Court is of considered opinion that the Claims

Tribunal did not commit any mistake by holding that appellant had suffered disability of 33%.

17. At this stage, it is submitted by counsel for Insurance Company that appellant has stated that he was treated by Dr. Rajiv Choudhary and Dr. Rajiv Choudhary was examined as DW 1, who has stated that at the time of admission appellant had informed that he had fallen on account of slip of Motorcycle. However counsel for Insurance Company fairly conceded that in paragraph 4 of his cross-examination, Dr R.K. Choudhary (DW1) has specifically stated that aforesaid disclosure is based on his memory and that he did not recollect as to whether the factum of slipping of Motorcycle is mentioned in the record of hospital or not. Even this witness has also not produced the record of Hospital to show that appellant had disclosed that he had suffered injury on account of slipping of motorcycle.

18. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that the Claims Tribunal did not commit any mistake by holding that appellant had suffered permanent disability of 33% only.

19. No other argument is advanced by counsel for the parties.

20. Accordingly the Award dated 5.1.2005 passed by First Additional Motor Accident Claim Tribunal, Vidisha in Claim Case No. 81/2004, is hereby affirmed.

21. Appeal fails and is hereby dismissed

(G.S. Ahluwalia)
Judge

(and)