

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

FAO No. 1351 of 2012 (O&M)

Date of Decision:- 08.12.2017

Abhishek Chaudhary

....Appellant

Versus

Suresh Kumar & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Kulwir Narwal, Advocate, for the appellant.

Mr. Arun Sharma, Advocate, for

Mr. T.K. Joshi, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 1.10.2011 passed by Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal').

On 2.10.2009, the appellant aged 22 years was going on his motor-cycle bearing registration No. HR-12K-4074. The said motor-cycle was hit by a rashly and negligently driven jeep bearing registration No. DL-1LK-9301 (for short, 'the offending vehicle'). As a result of the accident, the appellant suffered grievous injuries and the jeep ran over his right leg. He was taken to PGIMS Rohtak for treatment. FIR No. 373, dated 2.10.2009 was registered at Police Station Sadar Rohtak.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The Tribunal after appreciating the facts and considering the evidence produced awarded a sum of Rs.7,28,000- along with interest @6% per annum.

The present appeal has been filed for enhancement of the compensation.

I have heard learned counsel for the parties; perused the paper-book and the record.

There is no dispute raised on the facts by either of the parties i.e. involvement of the offending vehicle, rash and negligent driving of the offending vehicle.

Learned counsel for the appellant argued that the leg of the appellant was crushed and it was advised that the leg would have to be amputated. Thereafter he was shifted to a private medical hospital and after a very long treatment his leg was saved but he had to undergo treatment for two years and had to undergo various surgeries and last surgery was in the year 2012. He further argued that the Tribunal has not considered various pecuniary and non-pecuniary heads while quantifying the compensation. His further grievance is that though the disability qua the limb has been certified as 30% but infact the functional disability is much more. He relies upon the additional evidence produced in appeal to claim medical expenses for the treatment after the award and to show pain and suffering undergone by the appellant.

Learned counsel for the insurance company on the other hand argued that there was no positive evidence brought on record to show that what was the functional disability qua the whole body. His grievance is that if additional evidence is to be taken on record at the stage of appeal then they should be given an opportunity to verify the same.

In view of the submissions made by the counsel for the parties

and after considering the facts of the case, without expressing any opinion on merits of the case, it is deemed appropriate to remit the matter back to the Tribunal to decide the issue of compensation regarding pecuniary and non-pecuniary heads both afresh in accordance with law.

The parties would be at liberty to adduce fresh evidence, if so required.

The parties are directed to appear before the Tribunal on 10.01.2018. The record along with additional evidence be sent back to the Tribunal.

The appeal is disposed of accordingly.

December 08, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No