

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

647

FAO No.3408 of 2012
Decided on : 31.10.2017

Harjinder Singh @ Arjinder Singh

... Appellant

Versus

M.Subramani and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Sarwinder Goyal, Avocate
for the appellant.
Mr.Arun Sharma, Advocate for
Mr.T.K.Joshi, Advocate for respondents
Ms.Vandana Malhotra, Advocate
for respondent No.3.

Avneesh Jhingan , J. (Oral)

The present appeal is a result of an accident which occurred on 06.08.2010 injuring Harjinder Singh. The said accident involved vehicle bearing registration No.HR-38L-1198 and the offending vehicle bearing registration No.TN-33-AE-5278. As a result of the accident, Harjinder Singh suffered multiple injuries which resulted into imputation of his leg. FIR was registered.

2 The injured was taken to Stanley Govt. Hospital, Chennai from where, he was referred to Aysha Govt. Hospital, where he remained admitted upto 3.9.2010.

3 A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed and the Tribunal awarded a sum of Rs.3,38,000/- along with interest at the rate of 8% per annum.

4. Aggrieved of the said award, the present appeal has been

filed for enhancement.

5. Heard learned counsel for the parties and perused the paper-book.

6. Learned counsel for the appellant argues that the Tribunal has mainly reimbursed the medical and medicines expenses and only Rs.30,000/- has been awarded under various heads. He argued that the appellant has suffered 80% disability qua lower the limb. He further argued that he was a driver and this disability results to 100% of is functional disability.

7. Learned counsel for the respondents states that the Tribunal has not considered this aspect and hence, in first appeal before this Court, all the factual aspects cannot be considered without giving any opportunity to the respondents to rebut the same.

8. The Hon'ble Apex Court in **Sandeep Khanuja** Vs. **Atul Dande and another** 2017(3) SCC 351 has held as under:-

“The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test.”

9 In the above decision, the Hon'ble Apex Court has held that it is not the percentage of disability qua the limb which has been taken into consideration but the resultant function disability which is to be considered.

10 Without expressing any opinion on merits, the matter is remitted back to the the Tribunal to assess the disability and thereafter,

award compensation accordingly. The parties would be at liberty to produce any other additional evidence or witness in support of their case. It is clarified that the amount already awarded would not be affected by this remand.

11. The parties are directed to appear before the Tribunal on 22.12.2017.

[Avneesh Jhingan]
Judge

31.10.2017
sd

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