

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

Date of Decision: 28.11.2017

(1) FAO No. 1808 of 2013 (O&M)

HDFC ERGO General Insurance Company Limited

.....Appellant

Versus

Akshay and others

.....Respondents

(2) FAO No. 977 of 2014 (O&M)

Sh. Akshay

.....Appellant

Versus

Shri Gulab Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Goyal, Advocate
for the appellant-Insurance Company in FAO No. 1808 of 2013
for respondent No.3-Insurance Company
in FAO No.977 of 2014.

Mr. Vipin Sharma, Advocate
for respondent No.1-claimant in FAO No. 1808 of 2013 and
for appellant in FAO No. 977 of 2014.

AVNEESH JHINGAN, J.

The present two cross appeals have been filed against the award dated 14.1.2013 passed by the Motor Accidents Claims Tribunal, Jhajjar (for short 'the Tribunal'). Since common question of law and facts are involved in both the appeals, the same are being disposed of by a common order.

aggrieved of the amount awarded as compensation for permanent disability.

FAO No. 977 of 2014 has been filed by the claimant for enhancement of compensation.

The bare facts necessary in the present appeal are that Akshay aged 22 years met with a motor vehicular accident on 1.8.2011. He was coming along with his friend on a motor cycle bearing registration No. DL-45AY-3976. The motor cycle was struck by a rashly and negligently driven Canter bearing registration No.HR-67-A-2116.

As a result of the accident, Akshay suffered multiple injuries and ultimately it resulted into amputation of right leg below knee. His disability was certified as 70%, vide Ex.PW3/A. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs.17,26,505/- along with interest at the rate of 7.5% per annum.

The fact regarding involvement of the offending vehicle or rash and negligent driving of the offending vehicle has not been disputed by the parties. The parties have not even disputed 70% permanent disability suffered.

The only grievance raised by the Insurance Company is that 70% disability was qua the limb and should not have been taken for the whole body.

The grievance of the claimant is also qua functional disability.

The argument raised by learned counsel for the Insurance Company is that the Tribunal has assessed the income and applied the percentage of disability qua the limb as the percentage of functional disability.

Learned counsel for the claimant has argued that after amputation of right leg below knee and fracture of femur, there was a fracture on the right arm also and the functional disability would be 100%.

The Tribunal has applied 70% disability qua the limb as percentage for economic loss or loss of earning capacity. The same cannot be sustained in law.

Hon'ble the Apex Court in **Sandeep Khanuja Versus Atul Dande and another** 2017(3) SCC 351 has held in para-14 as under:-

“.....10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the case, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.....”

Hon'ble the Apex Court has held that the percentage qua limb should not be mechanically applied as economic loss.

In the present case, no evidence has been adduced on record that what is the functional disability suffered by the claimant. In such circumstance, it would be appropriate to remand the matter back to the Tribunal, to decide the issue in accordance with law, after permitting both the parties to adduce evidence to establish functional disability.

Ordered accordingly.

However, it is clarified that the amount already disbursed to the

claimant would be subject to decision of the remand proceedings.

The appeals are accordingly disposed of.

Parties are directed to appear before the Tribunal on
20.12.2017.

28.11.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No