

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

FAO No.10178 of 2014 (O&M).
Decided on:-February 01, 2017.

Mohammad Bashir.

.....Appellant.

Versus

Harkirat Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Anil Kumar Garg, Advocate
for the appellant.

Mr. S.S. Kainth, Advocate for
Mr. Vikas Gupta, Advocate
for respondent No.2.

Mr. M.B. Jain, Advocate
for respondent No.3.

HARI PAL VERMA, J.

Injured-claimant Mohd. Bashir has filed present appeal seeking enhancement of the compensation.

In a claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), learned Motor Accidents Claims Tribunal, Sangrur (for short, the Tribunal) has awarded a sum of Rs.3,29,255/- as total compensation along with interest @ 6% per annum from the date of filing of claim petition till realization of the awarded amount.

Learned counsel for the appellant has argued that the claimant has examined CW10 Dr. Gurdeep Singh, Medical Officer, CHH, Ahmedgarh, who has proved on record disability certificate Ex.CW10/B of the claimant. As per the said medical disability certificate, the injured-claimant has 30% temporary disability which was likely to improve.

Along with the appeal, the appellant has filed an application under Order 41 Rule 27 read with Section 151 CPC for additional evidence and to consider the disability certificate issued by the office of Civil Surgeon, Sangrur (Medical Board) showing therein that as per the disability certificate dated 18.11.2014, the claimant suffered 54% permanent disability and the said disability is not likely to improve.

Learned counsel for the appellant-claimant has further argued that the disability certificate dated 18.11.2014 was never available before the Tribunal and the claimant could not avail the opportunity to bring this fact to the notice of the Tribunal during pendency of the claim petition.

I have heard learned counsel for the parties.

There is no dispute about the injury caused to the claimant in the accident which took place on 25.12.2010. The award was passed by the Tribunal on 16.09.2014, whereas the disability certificate showing 54% permanent disability of the claimant was issued by the office of Civil Surgeon, Sangrur on 18.11.2014. In fact, the disability certificate dated 18.11.2014 was issued after the earlier disability certificate Ex.CW10/B.

Be that as it may, since the claimant has moved present application under Order 41 Rule 27 read with Section 151 CPC for

additional evidence in the shape of disability certificate dated 18.11.2014, this Court feels that the matter deserves to be reconsidered by the Tribunal in the light of fresh disability certificate dated 18.11.2014.

Accordingly, the present appeal is accepted and the award dated 16.09.2014 passed by the Tribunal is set aside. The matter is remanded back to the Tribunal for a fresh decision after considering the disability certificate dated 18.11.2014.

It is made clear that the Tribunal shall pass a fresh award on the basis of earlier evidence except for the disability certificate dated 18.11.2014. The claimant shall be required to prove his case beyond all probabilities and the insurance company shall be well within its right to plead its case qua disability certificate dated 18.11.2014.

The parties are directed to appear before the Tribunal on 01.03.2017.

February 01, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No