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

FAO No.4393 of 2009

Date of decision: 9.2.2018

Ashok Kumar

....Appellant

Versus

Kamal Deep Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.Ashwani Arora, Advocate for the appellant.

Mr.R.C.Gupta, Advocate for the respondents.

AVNEESH JHINGAN, J. (Oral)

The present appeal has arisen from an award dated 8.5.2009 passed by Motor Accident Claims Tribunal, Moga (for short `the Tribunal).

An accident took place on 2.9.2006. Ashok Kumar, appellant was travelling in Tractor Trolley bearing registration No.PJU 1304. Near Bughipura drain a truck bearing registration No.PB04-2766 struck against Tractor Trolley. Second respondent owned the truck, 3rd respondent was insurer of the said truck. Appellant suffered multiple injuries and was taken to Civil Hospital Moga. He was referred to Guru Teg Bahadur Hospital, Amritsar where he remained admitted till 4.10.2006.

Claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short `the Act') was filed. The Tribunal assessed the compensation at Rs.1,62,651/- along with interest at the rate of 6% per annum.

The Tribunal while assessing the compensation noted that the deceased was 25 years of age. His income was assessed at Rs.3000/- p.m. It was claimed before the Tribunal that the appellant was a vegetable vendor but his earning could not be proved. As a result of the accident, there was 66% permanent disability qua both the lower legs.

Counsel for the appellant argued for enhancement of compensation on the grounds that: (i) the Tribunal erred in awarding lumpsum amount for disability and not applying the multiplier method and (ii) the amounts awarded under various heads were on the lower side.

No dispute has been raised with regard to the earning assessed by the Tribunal.

Learned counsel for the Insurer defended the award and submitted that no case for enhancement is made out as it has not been proved on record that to what extent the functional ability of the appellant has been effected due to accident.

The contention raised by the learned counsel for the appellant has merits and deserves acceptance.

The Hon'ble Apex Court in the case of **Sandeep Khanuja Vs. Atul Dande and another 2017(3) SCC 351** held that in case of injury while assessing the compensation, multiplier method should be adopted. It was further held that the percentage of disability qua the limb is not to be applied as multiplier for calculating the compensation.

There is no serious dispute on the fact that the appellant was a vegetable vendor. The fact regarding the disability of 66% has been proved by document Ex.P36. The said certificate has been proved by deposition of

Dr.Sanjiv Kumar Jain, Orthopaedic Surgeon, Civil Hospital, Moga. There was shortening of leg and stiff right knee. The appellant remained hospitalised from 3.9.2006 to 4.10.2006. Due to certain complications, he was again hospitalised from 12.10.2007 to 21.10.2007. Though there is nothing on record to prove the percentage of permanent disability qua whole body still instead of sending the matter back at this belated stage, having due regard to judgment delivered by Hon'ble Apex Court in **Syed Sadiq Etc. Vs. Divisional Manager, United India Ins.Co. 2014(1) JT 569**, 66% disability qua the lower limb is taken to be 35% qua whole body. Keeping in view age of appellant, multiplier of 18 is applied. Future income @ 40% is added.

Considering the nature of injury and the period of hospitalisation, the amount awarded under various heads are being enhanced as per the table mentioned below.

Compensation for permanent disability

Monthly Income	Rs.3000/-
40% future income	Rs.1200/-
35% disability qua whole body	Rs.1470/-

After applying multiplier of 18, compensation comes to Rs.3,17,520/- (1470x18x12).

<u>Heads</u>	<u>Awarded by Tribunal</u>	<u>Now awarded</u>
Medical expenses	Rs.91,651/-	Rs.91,651/-
Loss of earning	Rs.6,000/-	Rs.12,000/-
Attendant	Rs.4000/-	Rs.25,000/-
Pain and suffering	Rs.5000/-	Rs.50,000/-

Transportation	Rs.6000/-	Rs.20,000/-
Loss of amenities	Nil	<u>Rs.20,000/-</u>
	Total	Rs.2,18,651/-

The award dated 8.5.2009 is modified to the extent that the amount awarded of Rs.1,62,651/- is enhanced to Rs.5,36,171/-. The appellant shall be entitled to enhanced amount alongwith interest @ 6% p.a. from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the abovesaid terms.

(AVNEESH JHINGAN)
JUDGE

9.2.2018
Meenu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No