

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

F.A.O. No. 5182 of 2011 (O&M)

Date of Decision:16.02.2018.

National Insurance Company Ltd.

.....Appellant

Versus

Sandeep and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate
for respondents No. 2 and 3.

AVNEESH JHINGAN, J.(Oral)

The present appeal has arisen from award dated 02.05.2011 passed by the Motor Accidents Claims Tribunal, Jhajjar, (for short 'the Tribunal').

The accident took place on 20.01.2005. Sandeep aged 20 years was travelling on a scooter. The scooter developed some mechanical problem and the same was parked on the side of the road. A Marsal Jeep bearing registration No.HR-63-2831 (for short 'the offending vehicle') dashed into Sandeep. As a result of the accident, he suffered grievous injuries. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed on behalf of the appellant-Sandeep by his father. The claim petition was allowed ex-parte vide award dated

31.01.2007. The owner and driver of the offending vehicle moved an application for setting aside the ex-parte order. The same was allowed and they were permitted to file written statement. After due contest, the claim was decided vide award dated 02.05.2011. An amount of Rs.4,80,000/- along with interest at the rate of 7.5% was awarded by the Tribunal. While awarding the compensation, the Tribunal considered the fact that the claimant had suffered 75% permanent disability. Permanent Disability Certificate Ex.P2 was duly proved by the deposition of Dr. S.S. Chauhan, PW3. The permanent disability certificate, apart from other disability, certified that there was intellectual impairment and hearing impairment.

The Insurance Company has filed the present appeal.

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

The only issue raised by learned counsel for the appellant is that in the ex-parte award dated 31.01.2007, an amount of Rs.1,20,203/- was awarded, therefore, the Tribunal could not have awarded a sum of Rs.4,80,000/- vide its award dated 02.05.2011.

Learned counsel for the Insurance Company stated that he is not aggrieved of the setting aside of the earlier award. He had neither challenged it nor he is challenging it now. He is not able to challenge the quantum of compensation now awarded. His plea is that the Tribunal cannot award compensation in excess of what was awarded in the ex-parte award. The said plea has no merit and deserves rejection. Once an ex-parte award has been set aside, it is set aside for all intents and purposes. It cannot be accepted that the ex-parte award fixed a bench mark for awarding compensation which cannot be crossed. The Tribunal after giving due

opportunity to the respondents and after considering the evidence produced by both the sides, awarded the compensation. The same is not being challenged on quantum.

The appeal being bereft of any merits is hereby dismissed.

16.02.2018.
reema

(AVNEESH JHINGAN)
JUDGE

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