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

**FAO No.2003 of 2012 (O&M)
Date of Decision: 27.11.2018**

Ashok Chhabra

Appellant

Versus

Harish Kumar and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rahul Vats, Advocate
for the appellant.

Ms. Shifali Goyal, Advocate
for respondent No.1.

Mr. Pradeep Goyal, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 17.12.2011 passed by the Motor Accident Claims Tribunal, Panchkula [for brevity 'the Tribunal'] has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver and owner of Maurti Car bearing registration No. HR-70-2749 (hereinafter referred to as 'offending vehicle') and insurer of offending vehicle i.e. United India Insurance Co. Ltd. have been arrayed as respondents No.1 and 2 respectively in the present

appeal.

The brief facts necessary for adjudication of the present appeal are that on 31.01.2010, appellant was going to his shop on his scooter. On his way, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he fell down and sustained fractures of thigh, hip, shoulder and left knee cap. FIR was registered.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced, held that accident occurred due to rash and negligent driving of the offending vehicle. The owner-cum-driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹2,18,664/- alongwith interest @ 6% per annum as compensation.

The appellant was running a bakery shop. Due to injuries sustained in the accident, he suffered 45% permanent disability qua upper and lower limb. Disability certificate was exhibited as Annexure P1. Dr. Umesh Modi, Sr. Medical Officer, General Hospital, Panchkula deposed before the Tribunal as PW1 for proving the permanent disability.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the appellant contended that the Tribunal has not awarded any amount for permanent disability. He further argued that amounts awarded under various heads are on

lower side. While concluding his arguments, he submitted that the appellant wants to put an end to the litigation and a reasonable amount may be enhanced.

Learned counsel for the insurer defended the award and resisted any further enhancement. He contended that no functional disability was proved on record.

The contention raised by learned counsel for the appellant is very reasonable and deserves acceptance.

It is to be taken into consideration that the appellant remained hospitalized for more than 15 days, he was operated upon. The injuries have resulted into permanent disability of his arm and leg. Albeit there is nothing on record to prove the functional disability.

The accident occurred in the year 2010. Instead of remanding the matter back to the Tribunal for adducing evidence to prove functional disability suffered, it would be appropriate that as per decision of the Division Bench of this Court in **Piara Singh and others Vs. Satpal Kumar and others 2006(4) RCR (C) 546,** ₹90,000/- is awarded for permanent disability (45% disability x ₹2,000/- for each percentage of disability).

Keeping in view the nature of injuries suffered, it can be safely concluded that his day to day work would have been affected. Taking into consideration the period of hospitalization and nature of injuries suffered, the amount awarded under miscellaneous expenses including transportation is enhanced by ₹10,000/- as the

appellant would have required attendant not only during hospitalization but subsequent to that also.

The award dated 17.12.2011 is modified to the extent that amount of ₹2,18,664/- awarded by the Tribunal is enhanced by ₹1,00,000/-.

The claimant shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 27, 2018
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |