

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

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FAO No.4396 of 2013 (O&M)

Date of decision: 29.11.2018

SUMMYA

... Appellant

Versus

SATISH AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for the appellant.

Mr. D.K. Prajapati, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.18272-CII-2013

Heard.

Allowed as prayed for. Delay of 308 days in filing the appeal stands condoned.

Main Case

The minor claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 03.08.2009.

Perusal of the award would reveal that the minor has suffered disability to the extent of 80% to her right lower limb. However, the guardian of the claimant did not examine a doctor to prove disability nor the Tribunal bothered to call upon the doctor to appear in the witness box for knowing the extent of functional disability suffered by the victim in its effort to award just and reasonable compensation in discharge of onerous obligation imposed by law. On the contrary, the Tribunal has proceeded to dispose of the matter by awarding lumpsum amount of Rs.2,25,000/- which shows that the Tribunal was not sensitive to the fact that a minor child, aged 7/8 years has suffered permanent disability of 80%. In the given circumstances, interest of justice commands that the matter be remitted to the Tribunal for assessment of compensation afresh after examining the doctor with regard to permanent disability suffered by the victim as well as

qua documents produced on record in respect of expenses on medical treatment of the child. In this view of the matter, findings of the Tribunal on issue No.2 are set aside and the matter is remitted to the Tribunal for assessment of compensation afresh by examining the relevant witnesses and in the light of enunciation laid down by Hon'ble the Supreme Court in **Master Mallikarjun Vs. Divisional Manager, The National Insurance Co. Ltd. and another, 2013(4) RCR (Civil) 295** and any other judgment relevant in the context.

For the foregoing reasons, appeal is disposed of and the matter is remitted to the Tribunal for assessment of compensation afresh on the basis of materials already on record and additional evidence either to be adduced by the claimant or to be examined by the Tribunal itself in its effort to assess just and reasonable compensation. The insurance company shall be at liberty to lead evidence in rebuttal, if any. Parties through their counsel are directed to appear before the Tribunal on 18.12.2018. The Tribunal shall complete exercise aforesaid within a period of two months from the parties putting in appearance. In the meanwhile, the insurance company shall not recover compensation already paid to the claimant.

29.11.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No