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

**FAO No.5705 of 2015
Date of Decision: 31.10.2018**

Mukesh

Appellant

Versus

Balraj Saini and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yash Dev Kaushik, Advocate
for the appellant.

Mr. D.P. Gupta, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J (Oral) :

The present appeal has been filed against award dated 04.04.2015 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal').

2. The brief facts necessary for adjudication of the appeal are that on 15.02.2014, the appellant was carrying motorcycle of his brother for repairs. He was on foot and was walking on the *kacha* path of the road. When he reached near brick kiln at Deeg Aswati Road, a rashly and negligently driver Car bearing registration No. HR-29AB-3914 (hereinafter referred to as 'the offending vehicle') struck the appellant and as a result he suffered multiple injuries including fractures. He was taken to B.K. Hospital and due to his

serious condition, he was referred to Safdarjang Hospital, Delhi. However, he was taken to Bhatia Orthopaedic and Maternity Nursing Home, Faridabad, where he remained admitted upto 21.02.2014 and was operated upon. FIR No.37 dated 19.02.2014 was registered at Police Station Sadar Ballabhgarh.

3. The Tribunal after considering the facts of the case and appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of Rs.1,40,700/- alongwith interest @ 9% per annum. The present appeal has been filed for enhancement of compensation.

4. Learned counsel for the appellant argued that amount awarded by Tribunal under various heads is on the lower side. He contended that the appellant suffered fracture of Tibia Spine, appellant being a labourer was not able to work as he suffered injuries in accident.

5. Learned counsel for the insurer rebutted the contentions of appellant and stated that the appellant remained admitted in hospital for six days only. No evidence was adduced with regard to follow up treatment, hence, no enhancement is called for.

6. The facts that the appellant suffered fracture of Tibia Spine and intramedullary rod was inserted, itself is sufficient to show that he would have been bed ridden for a long period.

7. The Tribunal assessed the monthly income of the

deceased as ₹6,000/- and awarded compensation towards loss of income for three months.

8. Keeping in view the nature of the injury, it would be appropriate to assume that a labourer would not be able to make his earning atleast for six months. Keeping in view the facts and circumstances of the case, loss of income is enhanced from ₹18,000/- to ₹36,000/-.

9. The award dated 04.04.2015 is modified to the extent that amount of ₹1,40,700/- is enhanced by ₹18,000/-.

10. The appellant 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.

11. The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

October 31, 2018
pankaj baweja

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