

FAO No. 8992 of 2014
DECIDED ON: DECEMBER 04, 2018

....APPELLANT

VERSUS

....RESPONDENTS

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. Pardeep Goyal, Advocate
for the respondent-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The award dated 01.07.2014 passed by Motor Accident Claims Tribunal, Palwal (for short 'the Tribunal') has been assailed by the appellant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver of truck bearing registration No. HR-73-1357 (hereinafter referred to as 'offending vehicle'), owner and insurer of offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts emanating from the record are that on 04.10.2011, appellant alongwith respondent No.1 after loading marble stone in the offending

vehicle was going from Katni to Gurgaon. Respondent No.1 was driving the truck in a rash and negligent manner. When they reached near Suhag Nagar crossing, the offending vehicle hit an unknown truck parked on the said crossing. As a result of the impact, appellant suffered multiple injuries. FIR No. 425, dated 28.11.2011, under Sections 279, 338 and 427 of the Indian Penal Code, 1860 was registered at Police Station Firozabad South.

A claim petition under Section 166 of the Act was filed before the Tribunal.

The Tribunal on considering the facts and appreciating the evidence adduced held that the accident was caused by a rashly and negligently driven offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The appellant produced a disability certificate Ex.P-33, which was proved by the deposition of Dr. Sanjeev Meena. As per the disability certificate there was 85% permanent disability qua the limb. The Tribunal assessed the disability as 60% qua the whole body. The Tribunal awarded a compensation to the tune of ₹5,84,767/- alongwith interest @7.5% per annum.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellant contends that the deceased was working as a Cleaner of the Truck and 85% permanent disability qua the limb has resulted into 100% functional disability.

Learned counsel for the insurer contends that no cogent evidence was produced by the appellant to establish 100% functional disability. He pleads that the amount of compensation is appropriate and there is no scope of enhancement .

The Tribunal has already assessed 85% permanent disability qua limb as 60% disability qua the whole body, keeping in view the facts and circumstances of the case, in order to establish his claim, claimant requires to adduce evidence regarding functional disability. Consequently, the matter regarding quantum of compensation is remitted back to the Tribunal to decide afresh after affording an opportunity to the parties to adduce evidence, if so desired.

It is, however, clarified that remittance of the matter shall not affect the amount already awarded by the Tribunal.

Parties are directed to appear before the Tribunal on 15.01.2019.

DECEMBER 04, 2018
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>