

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

FAO-1343-2003 (O&M)

Date of decision: 06.02.2019

Jai Ram

...Appellant

Versus

Bizzi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Adarsh Jain, Advocate with
Ms. Nisha Puri, Advocate
for the appellant.

Mr. Vishal Chaudhri, Advocate
for respondent No.3.

H.S. MADAAN, J. (Oral)

Appellant/claimant Jai Ram had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e Bizzi, driver, Subhash Cooperative Transport Society, Faridabad, owner and M/s New India Assurance Company Ltd., Akash Theatre Complex, Mohna Road, Ballabgarh, insurer of bus bearing registration No.HR-38/4647 on the allegations that on 27.11.1996 at about 4.30 pm near Village Khirbi, respondent No.1-Bizzi driving bus No.HR-38/4647 in a rash and negligent manner caused injuries to him as a result of which he suffered permanent disability.

That petition was contested by all the three respondents, however, it was allowed by Motor Accidents Claims Tribunal, Faridabad, vide award dated 04.02.2002 and compensation of Rs.47,000/- was

granted to the claimant, however, the insurance company was given a right to recover the amount so paid from the insured.

Feeling dissatisfied with the amount of compensation awarded to him, the claimant has approached this Court by way of filing the present appeal against the award, notice of which was given to the respondents. Respondent No.3-Insurance Company has put in appearance through counsel in this appeal.

The matter was considered and it was found that there is a contradiction between documents Exs.P7, P8 and testimony of the doctor inasmuch as according to the testimony of doctor, the appellant was paralyzed from the waist down and the handicap certificate Ex.P7 reflects that his disability is 75%, whereas the disability certificate Ex.P8 shows disability as 40% terming it as temporary disability. Finding a contradiction to be there with the consent of the counsel, it was directed that the appellant be examined by the Medical Board to be constituted by CMO, Palwal and the Board would examine the appellant and send its report with regard to the current nature and extent of disability. It was so done vide order dated 30.08.2018. The Medical Board has since forwarded the disability certificate to this Court observing 80% disability qua the claimant.

It has been brought to my notice that while deciding issue No.2 with respect to entitlement of compensation by the claimant, the tribunal in the light of certificates Ex.P7 & P8 had granted compensation of Rs.25,000/- towards permanent disability, loss of future amenities, sufferings, mental agony etc. The disability certificate issued by the

Medical Board is required to be taken into consideration so as to properly assess the compensation payable to the claimant. Under the circumstances, I find that the matter needs to be remanded back to the tribunal for fresh decision. Learned counsel for the parties are agreeable to the same. Accordingly, the present appeal is disposed of, inasmuch as, the award in question is set aside and the case is remanded to the tribunal for fresh decision while taking into consideration the disability certificate by the Medical Board, Palwal. The Tribunal would allow the claimant reasonable opportunities to lead evidence to prove the certificate. Thereafter, the respondents be also allowed to lead evidence in rebuttal, if so desired by them. After hearing arguments, the claim petition be decided afresh.

The parties through counsel are directed to appear before the District Judge-cum-Motor Accidents Claims Tribunal, Palwal on 22.02.2019. The Tribunal shall give notice to other respondents who are not before this Court.

The Registry is directed to send the lower Court record to the said tribunal immediately. Since the case relates to the year 1996, the Tribunal is directed to conclude the hearing and decide the claim petition expeditiously preferably within a period of three months from the date of receipt of copy of the order there. The original disability certificate by the Medical Board, Palwal be forwarded to the tribunal for taking it into consideration.

06.02.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No