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

**FAO No.4163 of 2009 (O&M)
Date of Decision : 06.05.2019**

Prem Bhatia

Appellant

Versus

Lucky Dhiman and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.P.S. Ahluwalia, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral)

The award dated 01.10.2007 passed by the Motor Accident Claims Tribunal, Ambala [for brevity 'the Tribunal'] has been assailed by claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for the injuries sustained in the accident.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 22.04.2006. The claimant sustained injuries in the said accident. The

accident was result of rash and negligent driving of the Car bearing registration No. PB-13J-3121 [hereinafter referred to as 'offending vehicle']. The accident resulted into 20% permanent disability as the claimant could not sit squat or cross legs and would find difficulty in walking.

In the claim proceedings, the Tribunal awarded compensation of ₹1,53,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹62,654/- for medical expenses, ₹10,000/- or special diet, ₹30,000/- for pain and suffering, ₹40,000/- for permanent disability suffered and ₹10,000/- for loss of income. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

During the pendency of the appeal, an application was moved for adducing additional evidence for placing on record the documents showing the medical expenses incurred on removal of implant and subsequent medical bills. The application was allowed. Evidence so produced was taken on record. In order to verify the said document, the matter was remitted back on 02.05.2014.

The claimant failed to adduce evidence with regard to treatment undertaken at Pune. The Tribunal reported that claimant was able to prove that the medical expenses to the tune of ₹1,50,000/- were incurred at PGI, Chandigarh.

Thereafter, another request was made by the appellant to

provide one more opportunity to adduce evidence with regard to expenses incurred at Pune. The matter was again remitted back vide order dated 18.09.2015. The report dated 23.02.2016 has been filed. As per said report, it has been concluded that a sum of ₹7,00,000/- more was incurred by the appellant on his treatment at Pune.

Learned counsel for the appellant states that the medical expenses incurred at PGI and Pune be reimbursed.

Learned counsel for the insurer argues that implant had broken as the appellant had not taken precautions given by the Doctor. From perusal of the second report, it is forthcoming that the argument was taken by the insurer in the remand proceedings that the appellant failed to take care of his earlier surgery and as a result of his carelessness, the complications arose. The said issue was not gone into as the Tribunal stated that only aspect to be considered is whether the expenses incurred by the appellant are subsequent or not?

In order to arrive at just and equitable compensation, it would be necessary to determine that whether subsequent treatment was required because of injuries sustained in the accident or was result of negligence on the part of appellant to take due care. For this, evidence needs to be adduced.

As the matter had already been remitted twice and remand reports called for are not conclusive, the matter only

with regard to quantum of compensation is remitted back to the Tribunal to be decided afresh after affording opportunity to the parties to adduce fresh evidence, if so required.

The parties are directed to appear before the Tribunal on 10.07.2019.

Disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

May 06, 2019
pankaj baweja

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