

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

**FAO No.2327 of 2012
Date of decision :20.2.2019**

Bhajan Lal

.....Appellant

Versus

Birender Singh @ Birender Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms.Amrita Nagpal, Advocate for the appellant.
Mr.Sudhir Rana, Advocate for respondent No.1.
Ms.Mriganki Nagpal, Advocate for respondent
No.3.

AVNEESH JHINGAN, J.

1. The award dated 2.12.2011 passed by the Motor Accident Claims Tribunal, Palwal (for brevity, 'the Tribunal') has been assailed by the appellant-Bhajan Lal seeking enhancement of compensation of ₹2,30,000/- awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained in a motor vehicular accident.

2. The brief facts of the case are that on 2.6.2008, appellant-Bhajan Lal along with others was travelling in a three-wheeler bearing registration No.UP-85-9570. On the way, the three wheeler developed a mechanical defect and was parked at kacha path on the left side of the road. At

that time, the appellant and other occupants of the three wheeler were struck by a rashly and negligently driven Tata Safari bearing registration No.UP-16S-5244 (hereinafter referred to as 'offending vehicle'). As a result of the impact, the appellant sustained injuries, including the fracture of ribs and dislocation of left knee. He remained hospitalized for 20 days. FIR No.238 dated 3.6.2008 was registered.

3. In the claim petition filed under Section 166 of the Act, the Tribunal awarded a sum of ₹2,30,000/- along with interest @9% per annum considering the fact that there was 10% disability on account of mild restriction of movement in left hip with pain. It was opined by the Doctors that there is possibility of reduction of disability if proper physiotherapy is done.

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

5. The contention raised by learned counsel for the appellant is that the appellant underwent surgery and his spleen was removed due to the injuries sustained in the accident. No amount has been awarded for loss of income during the period of treatment.

6. Learned counsel for the respondents defends the award and resisted any further enhancement. He further contends that it has not been proved on record that removal of spleen was result of the injuries sustained by the appellant.

7. Since certain factual aspects of the matter need to be proved, without expressing any opinion on the merits of the case, the matter is remanded back to the Tribunal to decide afresh the issue of quantum of compensation after providing opportunity to the parties to adduce evidence in support of their claim.

8. The parties are directed to appear before the Tribunal on 4.4.2019.

9. Disposed of accordingly.

February 20,2019
KD

(AVNEESH JHINGAN)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

Yes / No
Yes / No