

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 10150 of 2014 (O&M)
DECIDED ON: MAY 07, 2019

SATBIR @ SUKHBIR TH. HIS LRS.

.....APPELLANTS

VERSUS

RATTAN SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Raghav Goel, Advocate for
Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Himmat Singh, Advocate for
Mr. H.S. Sullar, Advocate
for respondent No.2.

None for respondent No.3.

AVNEESH JHINGAN, J (ORAL):

The award dated 28.11.2013 passed by the Motor Accident Claims Tribunal, Sonapat (for brevity 'the Tribunal') in MACT Case No.151 of 2012 has been assailed in appeal by the claimant(s) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') for injuries sustained in the accident.

The driver, owner and insurer (i.e. Oriental Insurance Company

Ltd.) of vehicle bearing registration No. HP-12-D-3076 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in the appeal.

The factum of the accident is not disputed by the parties.

The grievance raised in the appeal is that the claim petition was filed under Section 166 of the Act but the Tribunal assessed the permanent disability and awarded compensation as per Workmen's Compensation Act, 1923.

The appellant suffered amputation of left leg above knee and a disability certificate showing that there is a 75% disability qua the limb was produced . The Tribunal awarded compensation of ₹3,25,010/- along-with interest @7.5% per annum.

Learned counsel for the appellant(s) contends that loss of future income has not been calculated, as per the decision of the Supreme Court in **Raj Kumar vs. Ajay Kumar and another, (2011) 1 SCC 343**. He further argues that various pecuniary and non-pecuniary heads have not been considered by the Tribunal.

Learned counsel for respondent No.2 argues that nothing has been produced on record to show that the permanent disability has affected the functional ability of the appellant. He defends the award and resists any further enhancement.

There is nothing on record to establish that what was the affect of the disability on the functional ability of the appellant. The Supreme Court in **Raj Kumar's** case (supra), held as under :-

“18. The Tribunal has proceeded on the basis that the

permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

It was held by the Supreme Court that permanent disability qua the limb cannot be considered as it is qua the whole body.

It was pleaded that the appellant was working as a Security Guard in a Dhaba and due to accident he became disabled and was unable to perform his duty. In such circumstances, in order to award just and equitable compensation, the matter with regard to quantum of compensation is remitted back to the Tribunal to decide afresh in accordance with law after providing opportunity to the parties to contest their claims.

However, it is clarified that while awarding compensation the Tribunal shall also consider awarding of compensation under various pecuniary and non-pecuniary heads.

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

The present appeal is disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

MAY 07, 2019
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Whether speaking/ reasoned	:	Yes
Whether reportable	:	No