

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2848 of 2013 (O&M)

Date of Decision: 21.05.2019

Nirbhai Singh

.....Appellant

Versus

Baltej Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. G.S. Saini, Advocate
for the appellant.

AVNEESH JHINGAN, J.(oral)

The award dated 9.1.2013 passed by Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as 'the Tribunal') has been assailed in appeal by the claimant being aggrieved of the quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts in brief are that a motor vehicular accident took place on 8.1.2011 in which Nirbhai Singh sustained injuries. As a result of the injuries sustained, his left arm was amputated, he suffered 45% permanent disability. Police rapat No.17 dated 8.1.2011 was registered at Police Station Shahkot.

In the claim proceedings, the Tribunal opined that the accident was result of rash and negligent driving of the driver of the offending vehicle i.e. truck bearing registration No.PB-29-G-9197. The owner, driver and insurer were held jointly and severally liable to pay the compensation. The

Tribunal awarded a sum of ₹60,000/- as compensation.

None has put in appearance on behalf of respondent No.3 inspite of service for the last many dates.

Heard learned counsel for the appellant and perused the record.

The grievance raised by learned counsel for the appellant is that the claim petition was filed under Section 166 of the Act, but the Tribunal awarded the compensation as per the Workmen's Compensation Act, 1923 (for short, 'WC Act').

From the perusal of the record, it is evident that the claim petition was filed under Section 166 of the Act, the compensation as per WC Act, is to be awarded in claim petition filed under 163-A of the Act.

As per the guidelines laid down by the Supreme Court, the Tribunal has to consider effect of disability on the functional ability of the appellant. Tribunal assessed disability as 100% relying upon the provisions of WC Act.

For deciding the quantum of compensation, the percentage of permanent disability qua limb cannot be taken qua whole body. It would have to be considered that what was the effect of permanent disability viz-a-viz functional ability. In order to decide this issue, certain factual aspects require to be gone into which may require adducing of additional evidence. The issue only with regard to quantum of compensation is remitted back to the Tribunal, to decide the same afresh after providing opportunity to the claimant and the insurer to adduce fresh evidence if so desired.

The claimant is directed to appear before the Tribunal on 30.7.2019.

Disposed of accordingly.

21.05.2019
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	No