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

**FAO No.6037 of 2014
Date of Decision: 22.01.2019**

Mehar Chand

Appellant

Versus

Hansraj and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K. Yadav, Advocate
for the appellant.

Mr. Punit Jain, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 24.03.2014 passed by the Motor Accident Claims Tribunal, Narnaul [for brevity 'the Tribunal'] has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The facts in brief are that a motor vehicular accident took place on 19.09.2011. The appellant was going on motorcycle bearing registration No.HR-35D-6932. On his way, the motorcycle was hit by a rashly and negligently driven motorcycle bearing registration No. RJ-32SA-6975 [hereinafter referred to as 'offending

vehicle']. As a result of the impact, the appellant suffered grievous injuries. FIR was registered at Police Station Nangal Chaudhary.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹6,19,751/- alongwith interest @ 6% per annum.

Learned counsel for the appellant contends that as a result of the injuries sustained by the appellant, there was permanent disability to the extent of 90% on account of flacid paresis right shoulder, elbow, wrist joint and partially fingers. The said disability was proved by deposition of Dr. Dinesh Podar. The grievance raised is that the Tribunal considered the disability as 20% permanent disability only qua whole body. He further contends that the appellant was owing a Tractor which he was plying himself and was having a *Bajri* Washing Plant, thus, the functional disability is much more than 20%.

Learned counsel for the insurer while defending the award argues that the percentage of disability qua limb cannot be taken qua the whole body.

The Supreme Court in case of **Raj Kumar vs. Ajay Kumar and another** reported as **2011(1) SCC 343** has held that compensation for permanent disability is to be calculated by applying

the multiplier method. It has further been held that percentage of permanent disability qua limb should not be taken as percentage of functional disability.

From the perusal of the paper book and relevant documents, it is evident that it was not proved that upto what extent, the permanently disability qua upper limb has affected the functional ability of the appellant.

Since factual aspects needs to be decided in the case, for which further evidence would be required, the matter with regard to quantum of compensation is remitted back to the Tribunal to decide afresh after providing opportunity to the parties to adduce evidence in support of their claims, if so desired.

The parties are directed to appear before the Tribunal on 25.02.2019.

[AVNEESH JHINGAN]
JUDGE

January 22nd, 2019
pankaj baweja

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