

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

**FAO No.6103 of 2014 (O&M)
Date of Decision: 11.03.2019**

Sandeep Kumar

Appellant

Versus

Rakam Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Saurabh Bhardwaj, Advocate
for the appellant.

Ms. Shamsheer Kaur, Advocate
for respondent No.2-Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 09.01.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra [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'].

[2] Brief facts of the case are that on 23.06.2012, Sandeep Kumar and his father were going on their separate bicycles on Kurukshetra-Kheri-Ram Nagar road towards Kuruskhetra. On the way, the appellant was hit by offending car bearing registration No. HR-10C-0003 [hereinafter referred to as 'offending vehicle']. As a result of the impact, the appellant fell on the windscreen of the

offending vehicle and then fell down and got struck underneath the offending vehicle. He was dragged to some distance. He received multiple grievous injuries and was taken to LNJP Hospital, Kurukshetra. FIR was registered at Police Station City Thanesar.

[3] 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-cum-driver and insurer of the offending vehicle were held jointly & severally liable to pay the compensation. The Tribunal awarded a sum of ₹5,42,835/- alongwith interest @ 7.5% per annum. The amount awarded included ₹3,68,335/- towards medical expenses; ₹50,000/- for pain & suffering and ₹1,24,000/- towards hospitalization.

[4] It would be pertinent to mention at this stage that no evidence with regard to nature of injuries was adduced before the Tribunal. Only the hospital record was produced. No Doctor was examined to substantiate the nature of injuries sustained. Even, there is no certification with regard to any temporary or permanent disability.

[5] During the pendency of the appeal, an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, was moved for issuance of directions for medico- legal examination of the appellant by constituting a Medical Board and permission to submit Disability Certificate.

[6] Learned counsel for the applicant/appellant contends that Disability Certificate could not be produced at the relevant time. He seeks further time today to get the applicant/appellant examined with regard to disability suffered in the accident.

[7] Learned counsel for the insurer has opposed the prayer.

[8] Heard learned counsel for the parties, perused the paper book and relevant documents.

[9] The accident took place in the year 2012. As per the pleading, the appellant remained hospitalized for 62 days. As per the contents of the Civil Miscellaneous Application, he was hospitalized for two days in PGIMER, Chandigarh and then he was shifted to Aarogyam Hospital, Kurukshetra. No endeavour was made to get the Disability Certificate, if any. The award was passed in the year 2014, no pleading or request was made before the Tribunal for permission to produce Disability Certificate. Even in this Court, the application was made in the year 2014, till date no such assessment of disability has been done, rather there is nothing on record to show that the appellant ever approached for issuance of Disability Certificate. After a lapse of seven years, it would be virtually impossible to connect the disability, if any, suffered due to injuries sustained in the accident in the year 2012. Moreso, when no Doctors appeared before the Tribunal to prove the nature of injuries sustained in the accident.

[10] No ground is made out for allowing the Civil

Miscellaneous Application and the same is dismissed.

[11] The Tribunal while awarding the compensation, has reimbursed the hospital bills. ₹1,24,000/- were awarded for hospitalization and ₹50,000/- were awarded for pain & suffering. The Tribunal has not considered the fact that the appellant was hospitalized for 62 days and would be requiring transportation and special diet not only during the period of hospitalization but thereafter also.

[12] Considering the fact, ₹30,000/- more are awarded for special diet, attendant & transportation. It is clarified that while enhancing the amount of ₹30,000/-, interest to be awarded under Section 171 has been taken into consideration.

[13] The appeal is disposed of.

[AVNEESH JHINGAN]
JUDGE

March 11, 2019

pankaj baweja

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