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

**FAO No.6295 of 2015
Date of Decision: 17.01.2019**

Sugan Chand

Appellant

Versus

Ami Lal Yadav and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. J.S. Rozera, Advocate
for the appellant.

Mr. M.B. Jain, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 28.05.2015 passed by the Motor Accident Claims Tribunal, Palwal [hereinafter referred to as '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 on 29.09.2012, the appellant sustained injuries in a motor vehicular accident involving a three wheeler bearing registration No. HR-73-0512 and a car bearing registration No. HR-29AA-0910 [hereinafter referred to as 'offending

vehicle'].

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 insurer of the offending vehicle was held liable to pay the compensation. The Tribunal awarded a sum of Rs.1,60,000/- alongwith interest @ 7.5% per annum.

The grievance raised in the present appeal is that the appellant suffered 25% permanent disability qua limb but the Tribunal has not applied the multiplier method.

Learned counsel for the insurer while defending the award submits that no evidence has been produced to show that the permanent disability qua limb has affected the functional ability.

The aim of awarding the compensation is that so far as possible a person suffering by a wrong act of another person is placed in a position, in which he would have been had the harm not been done. The endeavour is that sufferer receives full compensation, no more but certainly no less. The compensation can only be awarded for the harm which money can redress. There are certain losses which cannot be compensated by any amount of money. The duty of the Court would be to arrive at just and equitable compensation. One of the logical and reliable methods is to rely upon multiplier method to arrive at compensation to be awarded.

The Supreme Court in **Sarla Verma and others Vs. Delhi**

Transport Corporation and another (2009) 6 SCC 21, has provided a table for multiplier to be applied as per the age of the sufferer.

Further, the Supreme Court in **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343**, 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%. ”

The Apex court has held that disability qua limb cannot be considered to be functional disability qua whole body. It has further been held that the percentage of disability qua limb should not be applied as such qua the whole body, as there is nothing on record to show the affect of permanent disability vis-à-vis functional

ability.

The matter with regard to quantum of compensation is remitted back to the Tribunal to be decided afresh by applying the multiplier method and in accordance with law. The parties would be at liberty to adduce evidence in support of their claims, if so desired.

The parties are directed to appear before the Tribunal on 26.02.2019.

[AVNEESH JHINGAN]
JUDGE

January 17th, 2019
pankaj baweja

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