

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CM-7596-CII-2017 in/and
FAO-2265-2017 (O&M)
Date of Decision: July 23, 2019**

Dharambir

Appellant

Versus

Satpal and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Goyal, Advocate
for the applicant-appellant.

Mr. M.B.Jain, Advocate
for respondent No.3-Insurance Company.

JAISHREE THAKUR, J. (Oral)

The instant appeal has been filed seeking enhancement of the compensation allowed to the claimants by Motor Accident Claims Tribunal (for short 'MACT'), Panipat.

In brief, the facts are that an accident took place on 24.03.2013 at about 7.00 p.m. between the appellant Dharambir and a tractor-trolley bearing registration No.HR 06X-6791, being driven in a rash and negligent manner. Appellant-Dharambir was the pillion rider of the motorcycle which was being driven by Vicky. On account of the accident, the appellant sustained injuries and was admitted in a hospital at Panipat.

Subsequently, an FIR no.138 dated 25.03.2013 was registered against the driver of the offending vehicle. On consideration of the facts the Motor Accident Claims Tribunal awarded a sum of ₹1,18,235/- to be paid by the Insurance Company and to be recovered by the Insurance Company.

Aggrieved against the inadequate compensation, the instant appeal has been filed alongwith an application under Order 41 Rule 27 CPC for leading additional evidence. It is contended that the appellant suffered 75% permanent disability which certificate was not considered by the MACT Panipat on the ground that the doctor who had issued the certificate was not examined by the appellant. It is argued that in case the applicant-appellant is permitted to lead that additional evidence, it would be established that he had suffered 75% disability and, therefore, he would be entitled to a higher quantum of compensation then what had been assessed.

Notice of the application was issued and a reply has been filed stating that there is no infirmity in the order of the MACT, Panipat since the appellant had failed to exercise due diligence in examining the concerned doctor before the Tribunal. It is argued that the appellant herein has availed several opportunities to examine the doctor who had given the disability certificate and on non-examination of the said doctor the Tribunal had no option but to proceed with the case.

I have heard learned counsel for the parties and have gone through the pleadings of the case. I am of the view that another opportunity should be allowed to the appellant herein to lead additional evidence regarding the genuineness of the disability certificate issued to him. The

appellant herein had submitted an application on 9.12.2014 before the MACT-Panipat seeking to examine the concerned doctor of PGI Rohtak alongwith treatment record of the patient namely Dharambir-appellant herein as well as Dr. S.K. Jena of Vaishhavi Bone and Joint Clinic, Rohini Delhi alongwith relevant record. The appellant had also deposited the diet money, however, the doctor did not put in appearance before the Tribunal which led to the award being passed without relying upon the disability certificate.

The Motor Vehicles Act was enacted in the form of beneficial legislation in order to compensate persons who have suffered trauma, disability or died in an accident and, therefore, an opportunity ought to be allowed to the appellant to prove the disability certificate that has been issued by the doctors at Rohtak. Therefore, the application under Order 41 Rule 27 CPC for leading additional evidence is hereby allowed and the matter is thus remanded back to the MACT Panipat with a direction to give two effective opportunities to the appellant herein to lead evidence in support of his contention that he has suffered 75% permanent disability and he be permitted to summon the doctor concerned. Two equal opportunities are also allowed to the respondent Insurance Company to counter the evidence so led. In case the appellant is successful in establishing his claim of 75% permanent disability, the Tribunal is to re-assess the compensation accordingly.

Consequently the order for the Tribunal dated 05.10.2015 is hereby set aside for the matter to be decided afresh in accordance with the

law. The parties are required to appear before the MACT Panipat on 13.08.2019.

Petition stands disposed of accordingly.

23.07. 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No