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

FAO No.2122 of 1994 (O&M)
Date of decision: 17.11.2015

Oriental Insurance Company Ltd.
….Appellant

Versus

Sadhu Singh and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Bashamboo, Advocate,
for the appellant.

Appeal qua respondent No.1 dismissed.

Respondent Nos.2 and 3 *exparte.*

RITU BAHRI J. (Oral)

Oriental Insurance Company Ltd.-appellant has filed this appeal against the award dated 31.05.1994 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal'), whereby compnesation of Rs.1,50,000/- has been awarded in favour of the claimant-Sadhu Singh (respondent No.1 herein) on account of injuries received by him in a motor vehicular accident which took place on 24.05.1992.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 24.05.1992 at about 11.00 a.m., claimant-respondent No.1, along with his uncle Leela Ram and Munshi Singh, was waiting for a bus at bus-stand, Jarwa, District Mohindergarh for going to Satnali. In the meantime, a truck bearing registration No. HYM-2088, being driven by Ved Pal-respondent No.2

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(respondent No.1 in the claim petition) at a high speed and in a rash and negligent manner, came from the side of village Shampura and hit the claimant-respondent No.1 and Leela Ram, as a result of which, both of them received injuries. Right leg of claimant-Sadhu Singh was fractured. Thereafter, they were shifted to Primary Health Centre, Satnali, from where, he was referred to Medical College and Hospital, Rohtak. He remained admitted in the hospital from 24.05.1992 to 08.06.1992. Consequently, claimant-respondent No.1 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of truck bearing registration No. HYM-2088 by Ved Pal-driver and thus, returned the finding on issue No.1 in favour of the claimant. The said truck was belonging to Sanjay Yadav and was insured by Oriental Insurance Company Limited-appellant. This finding was rightly based on the deposition of Sadhu Singh-claimant, Leela Ram (PW-3), Dr. Dinesh Podar (PW-1) and Subhash Chander, Record Keeper, Medical College and Hospital, Rohtak (PW-4). PW-4 had identified the signatures of Dr. Gulshan Kumar on MLR Ex.PW4/A and the bed head ticket Ex.PW4/B. He also identified the signatures of Dr. Anamika, Radiologist on x-ray report Ex.PW4/C. The Tribunal has assessed the compensation keeping in view the fact that the claimant had suffered fracture of femur of right leg, resulting in shortening of right leg by 1/2" which restricted the movement of right hip joint. He was permanently disabled to the extent of 10%. His income was assessed as Rs.800/- per month taking him to be a daily wager. Accordingly, loss of income of claimant was assessed as Rs.1,17,600/-

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(Rs.800 x 12 x 16). Apart from this, Rs.26,000/- were awarded for pain & suffering and mental agony and Rs.6400/- for transportation, treatment, medicines, special diet and attendant. Ultimately, the claim petition was accepted and the claimant was found entitled to a total compensation of Rs.1,50,000/- along with interest at the rate of 12% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

The main ground of appellant-insurance company for modifying the impugned Award is that driver-Ved Pal was not holding a valid driving licence. The Insurance Company had made an application before the Tribunal for production of driving licence of the driver and the Tribunal vide order dated 22.04.1994 had directed the respondent-driver to produce his driving licence on 10.05.1994, failing which, an adverse inference would be drawn against him. In spite of specific direction, the driver did not produce his driving licence. Hence, a prayer has been made that the liability fastened on the Insurance Company-appellant be modified and recovery rights be given to the Insurance Company to effect recovery from the driver and owner of the offending vehicle.

A perusal of the zimni order dated 22.04.1994 shows that driver of the offending vehicle namely Ved Pal was given an opportunity to produce his driving licence. But, he failed to do so. Hence, the Tribunal should have taken an adverse inference against the owner and driver of the offending vehicle. However, while assessing liabilities of the respondents to make payment of compensation, this fact had not been taken into consideration by the Tribunal. Since valid driving licence was not produced

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by driver of the offending vehicle, the impugned Award is liable to be modified.

In view of the above, the impugned Award is partly modified and recovery rights are given to the appellant-Insurance Company.

Partly allowed accordingly.

(RITU BAHRI)
JUDGE

17.11.2015
ajp

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