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

FAO-1313-1995
Date of Decision: August 27, 2015

The New India Assurance Company Limited .... Petitioner

Versus

Sadhu Singh and others .... Respondents

FAO-1321-1995

The New India Assurance Company Limited .... Petitioner

Versus

Joginder Singh and others .... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Ashwani Talwar, Advocate with
Mr. J.S.Chatrath, Advocate
for the appellant.

Mr. Imran Farooq, Advocate for
Mr.D.S.Pheruman, Advocate
for respondent No.1.

Mr. Prateek Mahajan, Advocate
for respondent No.2.

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RITU BAHRI, J. (Oral)

This order of mine shall dispose of the above two appeals i.e. FAO Nos. 1313 and 1321 of 1995 wherein challenge is to the award dated 12.01.1995 passed by learned Motor Accident Claims Tribunal, Amritsar whereby compensation of Rs.78,000/- has been awarded to the complainant who had suffered physical permanent disability of 50%. However, for the facility of reference, the facts are being taken from FAO No.1313 of 1995.

Brief facts of the case are that the claimant was travelling in a bus bearing registration No.PJE-9277, belonging to the District Transport Co-operative Pvt. Ltd.(respondent No.1), was seriously injured in a road accident on account of rash and negligent driving of the said bus by Balkar Singh-respondent No.2 on 20.08.1991 at about 8.00 a.m. near sheller of Puran Singh of Harsha China in the area of village Kukranwala. Sadhu Singh was taken to the clinic of Dr. Balwinder Singh of village Bhangwan and remained under his treatment from 20.08.1991 to 25.09.1991. Thereafter, he was taken to S.G.T.B. Hospital, Amritsar, where he remained as an indoor patient since 26.09.1991. It is submitted that the claimant was undergoing treatment and incurred expenditure of medicine and treatment. He is also subjected to have remained out of work for a sufficient period since he suffered physical disability. He claimed compensation of Rs.3 lacs.

The FIR (Ex.PA) was registered against Balkar Singh under Section 279, 337 and 338 IPC. The Tribunal cannot go through the accident in which the complainant had suffered injuries on account of rash and negligent driving of the offending vehicle which cause multiple injuries to Sadhu Singh. Driver of the bus was aware that there was some technical defect and in such condition he was expected to slow down the speed of the bus and was to drive the vehicle with due care and caution. The tractor was coming from the opposite direction, besides, the stationary tractor standing on the road side. The driver should have completely stopped the bus and should have allowed to allow the tractor to pass by road side first and then should have gone ahead to cross the stationary tractor standing on the road side. Hence, the driver was found negligent while driving the vehicle.

In view of disability of 50%, the tribunal has calculated the compensation as below:-

Annual Income	:	Rs.6,000/-
Special diet and medical expenses	:	Rs.12,000/-
pain and suffering and loss of prospectus	:	Rs.20,000/-
permanent disability	:	Rs.40,000/-
Total	:	Rs.78,000/-

On the issue with regard to the liability, it has been held by the Tribunal that the Insurance Company also sought report from Ghuwahati in Assam to prove that the driving licence No.B-21218 dated 25.12.1980 was not issued from that office. The report of the surveyor Mark A and B. The licence was renewed by DTO, Amritsar upto 15.03.1993. Reliance has been placed to the judgment passed by the Division Bench of this Court in **National Insurance Co. Ltd. Vs. Sucha Singh, 1994(1) R.R.R., 439**, wherein it has been held that the Insurance Company would be liable to pay the compensation if the licence had been renewed even if the original licence was faked.

In view of the judgment of the Supreme Court in the case of **Rajinder Kumar Vs. Jamna Dass Kotewala, JT 1990(3) SC, 197** has held that the Court is not to interfere in the concurrent findings of facts, where the evidence is neither perverse nor the conclusion are violative of basic principles of law.

Learned counsel for the Insurance Company has placed reliance to the judgment in the case of **New India Assurance Company Vs. Kamla, 2001(3) RCR (Civil), 716** wherein it has been held that if the original licence was fake licence, the liability is of the Insurance Company for making the payment of compensation. The stand of the District Transport Co-operative Pvt. Ltd.- respondent No.1 owner of the vehicle is that the driver was not holding a valid driving licence and sought report from Ghuwahati in Assam with regard to the fake licence. Respondent No.1 has referred to the surveyor's report Mark A and B. The same does not carry any weight because the driving licence was renewed by the DTO Amritsar upto 15.03.1993 and the accident had taken place much earlier to 05.01.1993.

The argument of the counsel for the respondent is that the insurance company has not led any evidence to prove the original licence issued from Assam was a fake licence except the surveyor report mark A and B and not examining any witness who has conducted the survey. This aspect has been considered by a Division Bench of this Court in **<u>National Insurance Company Ltd. Vs. Smt. Asha Rani and others, 2008(1) RCR (Civil) 5</u>** wherein it has been held that no witness has appeared from the licensing authority to prove the report. This report does not constitute any evidence without being proved by the competent witness from the licensing authority. It is not disputed in the present case.

Hence the appeals are hereby dismissed.

(RITU BAHRI)
JUDGE

27.08.2015
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