

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

**(1)**

**FAO No.497 of 2000  
Date of decision : 24.02.2016**

**Munish Kumar Goyal**

.....Appellant

*Versus*

**Sukhdev Singh and others**

...Respondents

**(2)**

**FAO No.498 of 2000  
Date of decision : 24.02.2016**

**Bhushan Kumar**

.....Appellant

*Versus*

**Sukhdev Singh and others**

...Respondents

**(3)**

**FAO No.3732 of 1999  
Date of decision : 24.02.2016**

**New India Assurance Company Ltd.**

.....Appellants

*Versus*

**Munish and others**

...Respondents

**(4)**

**FAO No.3733 of 1999 (O&M  
Date of decision : 24.02.2016**

**New India Assurance Company Ltd.**

.....Appellants

*Versus*

**Bhushan Kumar and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Rishav Jain, Advocate for  
appellants in FAO Nos.497 & 498 of 2000 and  
for respondent No.1 in FAO No.3732 & 3733 of 1999.

Mr. Gurdev Singh Kuka, Advocate for  
respondents No.1 to 3 in FAO Nos.497 & 498 of 2000 and  
for respondents No.2 to 4 in FAO No.3732 & 3733 of 1999.

Mr. Neeraj Khanna, Advocate for respondent No.4  
in FAO Nos. 497 & 498 of 2000 and  
for appellants in FAO No.3732 & 3733 of 1999.

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**DARSHAN SINGH, J.**

This judgment of mine shall dispose of all the four appeals mentioned above, which have arisen out of the same award dated 02.11.1999 passed by learned Motor Accidents Claims Tribunal, Bathinda (hereinafter called the 'Tribunal'), vide which Munish Kumar Goyal, the appellant of FAO No.497 of 2000 has been awarded the

compensation to the tune of ₹2,65,593/- and Bhushan Kumar appellant of FAO No.498 of 2000 has been awarded the compensation of ₹3,00,000/- on account of the injuries suffered by them in the motor vehicular accident which took place on 11.06.1995.

2. FAO Nos.497 and 498 of 2000 have been filed by the claimants-appellants for enhancement of compensation.

3. FAO Nos.3732 and 3733 of 1999 have been filed by the appellant-New India Assurance Company Ltd. disputing its liability to pay the awarded amount.

4. I have heard Mr. Rishav Jain, Advocate, learned counsel for the appellants in FAO Nos.497 & 498 of 2000 and for respondent No.1 in FAO No.3732 & 3733 of 1999, Mr. Gurdev Singh Kuka, Advocate, learned counsel for respondents No.1 to 3 in FAO Nos.497 & 498 of 2000 and for respondents No.2 to 4 in FAO No.3732 & 3733 of 1999, Mr. Neeraj Khanna, Advocate, learned counsel for respondent No.4 in FAO Nos. 497 & 498 of 2000 and for appellants in FAO No.3732 & 3733 of 1999 and gone through the paper-book carefully.

5. Mr. Neeraj Khanna, Advocate, learned counsel for the appellant- Insurance Company contended that Sukhdev Singh the driver of the Canter was not holding the valid driving licence. The learned Tribunal has appointed Mr.Jaideep Nayyar, Advocate as Local Commission. The Local Commission has given his report dated 24.07.1999, which depicts that the driving licence No.12513/RN/15769/GHT/85 in favour of Sukhdev Singh was never issued from the Office of The Licencing Authority/District Transport Officer, Kamrup, Guwahati.

He contended that once it is proved that original licence was fake, renewal thereof will not make it valid. Thus, he contended that the learned Tribunal has wrongly fastened the liability to pay the awarded amount on the appellant-Insurance Company. He contended that the owner and the driver were liable to pay the amount of compensation. He further contended that the amount of compensation awarded by the Tribunal is just and reasonable and does not require any enhancement.

6. Mr. Rishav Jain, Advocate for appellants in FAO Nos. 497 and 498 of 2000 contended that the adequate compensation has not been awarded to the claimants. No amount has been awarded by the Tribunal to the claimants with respect to the pain and suffering, loss of income, transportation and attendant charges and loss of amenity. Claimant Munish Kumar Goyal has suffered 65% permanent disability. Claimant Bhushan Kumar has suffered the amputation of his arm. Thus, he contended that the just and appropriate compensation has not been awarded by the learned Tribunal.

7. Mr. Gurdev Singh Kuka, Advocate, learned counsel for respondents No.1 to 3 (owner and driver) contended that the Local Commission was appointed to record the statement of Clerk office of the District Transport Officer Kamrup, Guwahati, but he has recorded the incomplete statement, which cannot be taken into consideration. So, it is not proved that the driving licence of Sukhdev Singh was fake. So, the Insurance Company cannot escape from its liability.

8. I have duly considered the aforesaid contentions.

9. Even from the report of the Local Commission, it is

evident that Mr. Jaideep Nayyar, Advocate was appointed as Local Commission to record the statement of the Incharge/Dealing Clerk in the Office of the District Transport Officer, Kamrup, Guwahati (West Zone) with respect to the driving licence stated to be in the name of Sukhdev Singh, respondent No.1. The said Local Commission had visited the aforesaid office on 24.06.1999 and recorded the statement of Mr.Mubarak Ali, Assistant in the office of the District Transport Officer, Kamrup (West Zone), Guwahati. In the report of the Local Commission it is mentioned that Mr. Sanjay Goyal, Advocate was authorised by Mr.J.K. Khurana, Advocate, learned counsel for respondents No.1 to 3 to cross-examine Mr. Mubarak Ali, but he hesitated to be cross-examined by Mr.Sanjay Goyal, Advocate on the ground that he was appointed as Local Commission in another case and had recorded his statement on the same day. That was no ground for the witness to hesitate to face the cross-examination by Mr. Sanjay Kumar Goyal, Advocate who was authorised by Mr. J.K. Khurana, Advocate, learned counsel for respondents No.1 to 3 to cross-examine him. Due to the aforesaid hesitation of Mr. Mubarak Ali, the Local Commission has mentioned cross-examination "NIL". Though, he has recorded that counsel authorised to cross-examine the witness for respondents No.1 to 3 was present. It is nowhere mentioned that the learned counsel for respondents No.1 to 3 has refused to cross-examine the witness. If the witness was not ready to face the cross-examination by Mr.Sanjay Kumar Goyal, Advocate, the Local Commission should have deferred the cross-examination and brought this fact to the notice of the Court concerned but instead of that, he mentioned

the cross-examination “NIL”, which is factually against the record. The report of the Local Commission itself shows that Mr. Sanjay Kumar Goyal, Advocate, who was authorised by Mr. J.K. Khurana, Advocate, learned counsel for respondents No.1 to 3 was present for the purpose of conducting the cross-examination of Mr. Mubarak Ali. Mere this fact that Mr. Sanjay Kumar Goyal, Advocate had recorded the statement of Mr. Mubarak Ali as Local Commission in some other case, was no ground for the witness to refuse to be cross-examined by Mr. Sanjay Kumar Goyal, Advocate. In this manner, respondents No.1 to 3 have been deprived of to cross-examine Mr. Mubarak Ali without any lawful excuse. So, the statement of Mr. Mubarak Ali is incomplete as respondents No.1 to 3 had no opportunity to cross-examine him. It is settled principle of law that the incomplete statement of a witness cannot be taken into consideration. So, the statement of Mr. Mubarak Ali recorded by the Local Commission cannot be taken into consideration.

10. The Local Commission was appointed just to record the statement of the official of the Office of the District Transport Officer, Kamrup, Guwahati. He was not himself authorised to report about the validity of the driving licence. Thus, in these circumstances there is no legal evidence available on record to establish that the driving licence of respondent No.1 Sukhdev Singh was fake.

11. Further, mere this plea that the driving licence of Sukhdev Singh, the driver of the vehicle was found fake, is not sufficient to absolve of appellant-Insurance Company from its liability to pay the compensation in view of the statement made by RW2 Manjit Singh, one

of the owners of the canter, wherein he deposed that Sukhdev Singh is his driver. He was to drive his canter bearing No.PB-03-2141. He was employed with him for the last about four years. At the time of employment, he had verified his licence, he was holding valid driving licence. The same was got renewed from DTO Bathinda. He verified about the licence of his driver from the office of the DTO, Bathinda, which was renewed and was found to be valid licence. From the aforesaid statement of respondent Manjit Singh it comes out that he has taken reasonable care and caution while employing Sukhdev Singh as driver of their canter. They have seen his driving licence which and also got verified it from the office of the DTO, Bathinda, which was found to be valid. The driving skill of driver Sukhdev Singh is not in question as he has been driving the canter in question for the last about four years.

12. In view of the consistent rule of law laid down by the Hon'ble Apex Court in the cases *New India Assurance Company Ltd. Vs. Harnek Singh and others* 2006 ACJ 2280, *United India Insurance Co. Ltd. Vs. Leheru and others* (2003)3 SCC 338, *Lal Chand Vs. Oriental Insurance Co. Ltd.* (2006)7 SCC 318, *National Insurance Co. Ltd. Vs. Geeta Bhat & Ors.* 2008(3) RCR (Civil) 44 and *Pepsu Road Transport Corporation Vs. National Insurance Company* 2013(4) RCR (Civil) 273, as respondent-owner Manjit Singh has satisfied himself that driver Sukhdev Singh had a driving licence, so there could be no breach of terms and conditions of insurance policy on the part of the insured if later on the licence is found fake and the appellant-Insurance Company cannot be absolved of its liability to indemnify the insured.

13. Hence, there is nothing wrong in fastening the liability on the appellant-Insurance Company, though on different reasons as assigned by learned Tribunal.

14. I found that the learned Tribunal has not awarded the just and appropriate compensation to the claimants.

15. Firstly, I take up the case of Munish Kumar Goyal, the appellant in FAO No.497 of 2000. He has been awarded a total amount of ₹2,65,593/- as compensation. He has been awarded ₹2,16,000/- as compensation on account of permanent disability. Thereafter, he has been awarded ₹49,593/- towards treatment. No compensation has been awarded under any other head. Keeping in view seriousness of injuries suffered by claimant Munish Kumar, he will be entitled to sum of ₹20,000/- towards pain and suffering. He will also be entitled to a sum of ₹20,000/- towards transportation, special diet and attendant charges. He suffered the serious injuries and must have remained out of job at least for three months. So, he will be further entitled to a sum of ₹ 7200/- on account of loss of income during the period of treatment and thereafter till he became able to resume the work. As per the medical evidence, the right arm of Munish was smashed. So, he must have suffered the loss of enjoyment of life and amenity and shall be entitled to a sum of ₹ 50,000/- as compensation under this head. So, claimant Munish Kumar Goyal shall be entitled to a sum of ₹ 97,200/- in addition to the compensation already awarded by the learned Tribunal making the total amount of the compensation ₹ 3,62,793/-.

16. Now, I take up the case of Bhushan Kumar, the appellant



in FAO No.498 of 2000. In this case the Tribunal has awarded a total sum of ₹3,00,000/-. He has been awarded ₹2,40,000/- on account of the disability, ₹50,000/- towards medical expenses and ₹10,000/- as special diet. The learned Tribunal has not awarded any compensation on account of the pain and suffering, transportation and attendant charges, loss of income, loss of enjoyment of life and amenities. Appellant claimant Bhushan Kumar has suffered the amputation of his right arm. The amputation of the limb causes pain and trauma to the victim. So, claimant Bhushan Kumar shall be entitled to a sum of ₹25,000/- on account of pain and suffering. He will be further entitled to a sum of ₹15,000/- towards transportation and attendant charges. He will be further entitled to a sum of ₹6000/- on account of loss of income during the period of treatment and thereafter till he became able to resume the work. He will be further entitled to a sum of ₹1,00,000/- towards loss of enjoyment of life and amenities. So, claimant Bhushan shall be entitled to a sum of ₹1,46,000/- in addition to the compensation already awarded by the learned Tribunal making the total amount of the compensation ₹ 4,46,000/-.

17. Thus, keeping in view my aforesaid discussion, FAOs Nos.3732 and 3733 of 1999 are without any merits and the same are hereby dismissed. However, FAO Nos.497 and 498 of 2000 are hereby partly allowed. The amount of compensation in these FAOs is enhanced as under : -

| FAO Nos.    | Amount of compensation<br>awarded by the Tribunal | Enhanced amount of<br>compensation by<br>this Court |
|-------------|---------------------------------------------------|-----------------------------------------------------|
| 497 of 2000 | ₹2,65,593/-                                       | ₹3,62,793/-                                         |
| 498 of 2000 | ₹3,00,000/-                                       | ₹4,46,000/-                                         |

The appellants shall also be entitled to interest at the rate determined by the learned Tribunal on the enhanced amount from the date of filing the claim petition till realization. The liability to pay the enhanced amount along with interest and mode of disbursement shall be as per the award passed by the learned Tribunal.

**24.02.2016**  
*sunil yadav*

**( DARSHAN SINGH )**  
**JUDGE**