

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

205-B

**XOBJC-74-CII-2002 in/and
FAO-922-2001 (O&M)
Date of Decision : 8.8.2018**

Sarabjit Chumber Alias Stiphan

....Appellant

vs.

Maha Kant Yadav and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Saurabh Kapoor, Advocate and
Mr. Sagar Aggarwal, Advocate for the appellant.

Ms. Shamsher Kaur, Advocate
for respondent No.-3-insurance company/Cross-Objector.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 1.6.2000 passed under Motor Accident Claims Tribunal, Karnal awarding compensation of Rs. 2,19,000/- alongwith interest at the rate of 12% per annum on account of injuries sustained by the claimant in an accident.

Counsel for the appellant has argued that in this accident nasal bone of the appellant was fractured and the right eye of the appellant has also been totally damaged and permanent disability was assessed as 25%. The Tribunal has awarded only a sum of Rs. 25,000/- for the permanent disability whereas normally principle for permanent disability is to award Rs. 2,000/- per per cent of permanent disability. I find this argument to be correct and award Rs. 25,000/- more under the head of permanent disability.

Counsel for the appellant has further stated that under the

heads of special diet, attendant and transportation charges only Rs. 15,000/- has been awarded whereas it was proved that the appellant was in hospital for 50 days. I deem it appropriate to grant him Rs. 10,000/- more under these heads. Ordered accordingly.

Learned counsel for the appellant has further argued that once it was proved that deceased was a driver, loss of income could not have been assessed as Rs.500/- per month only.

Counsel for the respondent No.3 on the other hand has stated that this injury cannot be said to prevent the claimant from doing some other work. That may be so, but once it was proved that he was a driver and he cannot drive the loss of income at the rate of Rs.500/- per month is very little. I deem it appropriate to increase it by Rs.1000/- per month. Ordered accordingly.

Counsel for the appellant has further states that loss of amenities of life is a separate head and nothing has been awarded under this head. Counsel for the respondent is not in a position to deny that loss of amenities of life is a separate head and nothing has been awarded. I deem it appropriate to award Rs. 20,000/- on this head also.

On the enhanced compensation the appellant would be entitled to interest at the rate of 7.5 % from the date of filing of the claim petition till the date of payment. Remaining award shall remain unchanged.

The appeal stands disposed with the above said modification.

XOBJC-74-CII-2002

Counsel for the cross-objector has argued that admittedly in the present case the license had expired on 19.4.1996 and thereafter it was

renewed only next year on 14.3.1997 and thus on the date of accident, that is 16.1.1997, the driver did not have a valid license. As per her the judgment relied upon by the Tribunal “*Ram Phal vs. Krishna Makkar and others (1988-2) The Punjab Law Reporter 561*” wherein an expired license was held not to absolve the insurance company must be held no longer a good law and in the subsequent judgments of Supreme Court in the matters of “*Ram Babu Tiwari v. United India Insurance Co. Ltd. and others*” reported as 2008 ACJ 2654, “*Francisca Luiza Rocha and others vs. K.Valarmathi and Others*” reported as 2018(1) RCR (Civil) 409 and “*National Insurance Company Limited vs. Jarnail Singh and others*” reported as (2007) 15 SCC 28. In all these cases the Supreme Court has held that in such a situation the primary liability to pay the compensation would be of the insurance company but it would have the right to recover the same from the owner.

In the circumstances, cross objection is allowed. It is held that though the cross objector-insurance company would be liable to pay the compensation in the first instance, it would be entitled to recover the same from the owner.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

8.8.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No