

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

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**FAO No. 1125 of 2018 (O&m)
Date of Decision : 1.03.2018**

Reliance General Insurance Company Ltd. Through Manager

....Appellant

VS

Sameem @ Samin Mohd. And another

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sanjeev Kodan, Advocate
for the appellant.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the order of the Employee's Compensation Commissioner dated 27.12.2017. Though it is a first appeal, I am constrained to decide the same in ex parte motion hearing because detailed argument have been made by the learned counsel.

Brief facts of the case are that the respondent claimed that he was a driver of commercial vehicle bearing No. HR-38/U-6991 owned by the respondent No.2 when while on duty on 16.7.2016 the vehicle met with an accident as a result of which, he suffered permanent disability with post traumatic fusion of left ankle which was assessed as functional permanent disability to the extent of 42% with effect on whole body. He consequently claimed compensation and the Commissioner allowed him an amount of Rs. 11,27,913/- alongwith interest @ 12% per annum from the date of accident till actual payment.

The Insurance company is in appeal before me.

The first argument raised by the learned counsel is that the appellant had exhibited RTI proceedings whereby the concerned transport authority had verified that the driving license was fake. As per him the reply received pursuant to an application under the RTI Act would be a certified copy of the public document under Section 76 of the Evidence Act and thus had to be taken that driving license was fake. In this connection, he has relied upon the judgment of this Court passed in the matter of “*Munshi Ram and another vs. Balkar Singh and others 2016 (2) PLR 526*” where this Court has held that response of RTI application would be covered under Section 77 of the Evidence Act. In my opinion, there is no quarrel with the proposition that a response elicited under the RTI Act could be a certified copy of public document if the document is covered under Section 74 of the Evidence Act. But the issue in the present case is that these documents were merely placed on record and no oral evidence was led. Had it been a case where an employee of the appellant had appeared to prove the RTI application and the reply, it could have been held that the driving license was fake. But in the absence of any person who appeared to testify to this effect, and was cross-examined, it would not be possible to come to the conclusion that the document placed on record was actually a public document. In the circumstances, the argument that the driving license was proved to be fake has to be rejected.

The second argument raised by the learned counsel is that the relationship of an employee and employer was not proved. In this

connection he has relied upon the FIR lodged in respect of the accident where it was mentioned that one Shamsheer was the driver. Again, the person who lodged the FIR was a stranger and he was never produced in evidence. In the circumstances, merely by placing the FIR on record it could not be said that appellant had proved that the driver was somebody else.

The third argument of the learned counsel is that once there was a permanent disability of 42% of the whole body, the Commissioner erred in taking disablement as 100%. To support his argument he has relied upon Section 2 (1) (g) of the Workmen's Compensation Act and argued that the injury suffered by the respondent No.1 is permanent partial disablement of the nature referred to in Part II Schedule-1. This exact issue had come up before the Supreme Court in the matter of *Pratap Narain Singh Deo vs. Srinivas Sabata and another, AIR 1976 SC 222*, wherein their Lordships on a consideration of the definition of the expression 'total disablement' held that the injured was a carpenter by profession and therefore the amputation of the left arm above the elbow totally disabled him to work. This judgment was subsequently followed by the Supreme Court in the matter of *S. Suresh vs. Oriental Insurance Co. Ltd. and another, (2010) 13 SCC 777*, wherein their Lordships reiterated the view taken by the Supreme Court in the case of Pratap Narain Singh Deo (supra).

This clause has been interpreted to hold that it would be the loss of earning capacity which would be determinative. In the present case, the nature of injury suffered by the respondent No.1 clearly shows

that he was incapable of holding his job of driver. In the circumstances, this argument is rejected.

Learned counsel for the appellant has further argued that interest at the rate of 12% is excessive. In my opinion, the interest is not excessive as per law. This contention is also rejected.

Consequently, the appeal stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

1.3.2018
anuradha

(AJAY TEWARI)
JUDGE

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