

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

RSA No. 4529 of 2018 (O&M)

Date of decision : 06.08.2018

The New India Assurance Co. Ltd.

....Appellant

V/s

Lado Devi & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. B.S. Taunque, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal has been preferred by appellant-insurance company impugning the judgments passed by two courts below. Learned counsel for the appellant has submitted that findings of both the courts below are unsustainable as there is a complete misreading of evidence. A substantial question of law arises whether courts below misread the evidence and thus arrived at a wrong conclusion. Interference is thus called for in second appeal.

I have heard learned counsel for the appellant.

Brief factual background of the case is that plaintiff-respondent no. 1 filed a suit seeking a direction to defendants to pay damages to the tune of ₹5,00,000/- on account of loss of her one eye, loss of income and other expenses etc. It was contended that plaintiff who got her eyes checked on 16.09.2006 from defendant no. 1(respondent no. 2 herein), an eye surgeon, in the eye camp organized by 'Om Parkash Jindal Gramin Jan Kalyan Sansthan at village Dhand. On the basis of general check-up, she was referred to Guru Nank Dev Charitable Eye Hospital and Educational Trust,

Sant Baba Dalip Singh Marg, Pehowa, district Kurukshetra. After getting her eyes checked in the said hospital, defendant no. 1 advised her minor operation for enhancement of eyesight and, thus, an operation was carried out. Thereafter, plaintiff took all the precautions and medication as advised by defendant no. 1 in order to prevent any kind of infection. On 17.09.2006, she, however, suffered great pain in her one eye and went to hospital for check up. As the infection had spread in the other eye and face, she was again operated upon by defendant no. 1. As her condition did not improve, she consulted a private doctor and got her eyes checked. She was, however, shocked to know that her operated eye had been removed by the doctor who had conducted the operation. In this manner, she had become permanently disabled from one eye due to negligence on the part of defendant no. 1. Suit was resisted by defendants. According to them, plaintiff had not followed the advice and instructions at the time of discharge. All the allegations were denied. After considering the evidence brought on record, trial court partly decreed the suit filed by the plaintiff. It held that removal of eye while conducting operation was an act of negligence on part of the defendants. They had failed to exercise proper and due care while operating on the plaintiff. It, thus, awarded compensation to the tune of ₹2.00 lacs with interest @ 9% P.A. till realization on the condition that plaintiff would affix the court fee on the aforesaid amount within two months from the date of judgment. Aggrieved, plaintiff-insurance company filed an appeal before the lower appellate court. It came to the conclusion that doctor who had conducted the operation was careless and negligent in performing his duties which led to loss of eyesight of plaintiff and thus, rightly granted the damages to the tune of ₹2.00 lacs. It, however, modified the judgment to the

company as the doctor who conducted the operation was insured. I find no infirmity with the findings arrived at by the two courts below. Learned counsel for the appellant has not been able to show any defect with the appreciation of evidence by two courts below. Further exercise to reappraise the evidence would be an exercise in futility. No substantial question of law is involved warranting interference of this court in second appeal. Same is, thus, without any merit and is hereby dismissed.

August 06, 2018
Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No