

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

228

FAO-5704-2017 (O&M)
Date of Decision : 29.11.2019

M/s Parth Public Senior Secondary School

.... Appellant

Versus

Anand (minor) through his father and others

..... Respondents

2.

FAO-7660-2017

Anand (minor) through his father

.... Appellant

Versus

Satpal and others

. Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Parminder Singh, Advocate
for the appellant in FAO-5704-2017 and
for respondent No.2 in FAO-7660-2017.

Mr. Parveen Sharma, Advocate
for the appellant in FAO-7660-2017 and
for respondent No.1 in FAO-5704-2017.

Mr. Vikram Singh, Advocate
for respondent No.1 in FAO-7660-2017 and
for respondent No.2 in FAO-5704-2017.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company.

NIRMALJIT KAUR, J. (ORAL)

Both the appeals shall stand decided by this common order.

FAO-5704-2017 has been filed by the appellant-school against the recovery rights granted to the respondent-Insurance Company.

Learned counsel for the appellant while praying for setting aside the award dated 24.05.2017 to the extent vide which the recovery rights have been granted, argued that as per the well settled proposition of law, the recovery rights cannot be given and the liability cannot be fastened upon the owner, in case the owner has seen the driving licence and had also tested the driving ability of the concerned driver. The alleged driving licence was placed on record as Ex.R-1 and Ex.R-18. Reliance is placed on record the judgment rendered by Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation versus National Insurance Company, 2013 (4) RCR (Civil) 273**, wherein it was held that, in case, the owner has seen the driving licence and satisfied himself of his driving, the Insurance Company cannot escape its liability.

Any person of a rural background will have no expertise to know as to whether the driving licence is fake or not. Leave alone a person from rural background, even a person with reasonable knowledge and education will not be able to find out the difference between the fake and a genuine driving licence. He is not expected to get the same verified from the Licensing Authority and in any case, the judgment rendered by Hon'ble Apex Court in the case of Pepsu Road Transport Corporation (supra) is a complete answer to the issue in hand. In fact, the said issue is no more res integra in view of the judgment rendered in case of Pepsu Road Transport Corporation (supra), wherein it was held as under:-

“9. On facts, in the instant case, the appellant employer had employed the third

respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position.”

In the present case, the owner has specifically filed his written statement and appeared as RW1 and has filed his affidavit Ex.RW1/A. It is submitted that the driver was subjected to a driving test and the said driving was found to be perfect and there was no complaint about his driving. Accordingly, the Court finds that the matter squarely covered by the judgment rendered in case of **Pepsu Road Transport Corporation (supra)**.

Accordingly, the award dated 24.05.2017 is set aside to the extent vide which a finding was recorded by the Tribunal against the owner and the liability was imposed upon the appellant-owner and the driver. Accordingly, the recovery rights so granted to the respondent-Insurance Company are set aside.

FAO-5704-2017 is accordingly disposed of as above.

The appeal i.e. FAO-7660-2017 has been filed by the claimants for enhancement of the compensation. The compensation only Rs.2,11,000/- was granted as compensation for injury to a child of 4½ years. Admittedly, the joint elbow was amputated and the injury was said to be 95%. Although, the injury is said to be 50% qua the entire body, the fact remains that the said injury being a permanent injury will render the child incapable of applying or joining various professions and his choice of profession shall be limited. The same shall also come in his way or doing manual work. It shall also affect his marriage prospects.

Therefore, this Court finds that the amount granted as compensation towards the disability and future loss of income is highly inadequate.

Learned Single Bench of this Court in the case of **Priyanka Bhutani vs. Sukh Pal Singh and others, 2011(2) RCR (Civil), 586** was pleased to enhance the compensation in a disability assessed at 68% by granting Rs.44,65,000/- as against Rs.6,32,000/- granted by the Tribunal. Although, the injury in the said case was related to brain injury and was almost 50% for the whole body, it was likely to only go worse with time. Thus, taking into account the injury in the present case, stated to be 95% of his amputation of the elbow, it is held 50% qua the whole body. Accordingly, this Court deems it appropriate to enhance the compensation by another amount of Rs.5 lakhs as lumpsum. The said amount of Rs.5 lakhs over and above the compensation already granted be paid to appellants within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim

petition till its realization. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

FAO-7660-2017 is allowed as above.

29.11.2019
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(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No