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**(2006) 03 P&H CK 0050**

**In the Punjab And Haryana At Chandigarh**

**Case No : First Appeal from Order No. 827 of 2003**

Nazar Mohammad

APPELLANT

Vs

Harbans Singh

RESPONDENT

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**Date of Decision : 01-03-2006**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149(2)

**Citation :** (2006) 2 ACC 763 : (2006) 143 PLR 818 : (2006) 3 RCR(Civil) 596

**Hon'ble Judges :** Viney Mittal, J

**Bench :** Single Bench

**Advocate :** H.S. Saggu, for the Appellant; S.S. AhluKh, for the Respondent

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## **Judgement**

Viney Mittal, J.—The claimant is the appellant before this Court. He is a person who was injured in an accident which had occurred on June 8, 2000. The claimant claimed that the bus in question was being driven by Harbans Singh, driver, rashly and negligently and on account of the aforesaid fact, the accident had occurred in which the claimant had suffered multiple injuries, when his left leg was crushed.

2. The learned Motor Accident Claims Tribunal, (for short "the Tribunal"), on the basis of the evidence available on the record found that the driver of the bus Harbans Singh, was rash and negligent in driving, and, therefore, the accident in question had occurred, resulting in injuries to the claimant-injured. He was held entitled to compensation. The amount of compensation was assessed at Rs. 50,000/- in lumpsum, keeping in view the medical expenses incurred by him and on account of the injury suffered by the claimant. Out of the amount of compensation, Rs. 45,000/- was directed to be deposited in F.Ds. initially for the period of five years.

3. The claimant has now approached this Court through the present appeal. Besides claiming enhancement of compensation, it has been prayed that the amount of compensation be ordered to be paid cash to him.

4. After hearing the learned Counsel for the parties at some length, I am satisfied that no claim for enhancement is made out. Although the claimant had claimed that he had suffered a permanent disability but no cogent evidence to prove the aforesaid fact was produced. Consequently, it could not be taken that the claimant-injured had suffered any permanent disability. The learned Tribunal while awarding the compensation has already considered the entire evidence and has granted Rs. 50,000/- as compensation on account of the injury suffered by the claimant and also on account of medical expenses incurred by him. The amount of compensation assessed by the Tribunal cannot be assessed to be inadequate in any manner.

5. During the course of arguments, the learned Counsel appearing for the appellant has argued that even the Insurance Company could not be absolved from its liability in view of the law laid down by the Hon"ble Supreme Court in the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . On the strength of the aforesaid judgment, the learned Counsel has maintained that Insurance Company was liable to pay the amount of compensation.

6. I have duly considered the aforesaid contention of the learned Counsel. In Swaran Singh's case, the Hon"ble Apex Court has held as follows;

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

7. In view of the aforesaid fact, it is apparent that a mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and had failed to exercise reasonable care at the time of employing the driver. In these circumstances, it has to be held that the Insurance Company is also jointly and severally liable to pay the amount of compensation.

8. Further, I find that the prayer made by the claimant-appellant is justified when he complains that almost the entire amount of compensation has been ordered to be deposited in the FDs. The learned Tribunal has lost sight of the fact that the aforesaid amount was required by the claimant inasmuch as he had already spent a sufficient amount on his treatment and medical expenses. Further the amount of compensation had become payable to the claimant only on account of

the injury suffered by him, and, therefore, depositing of the amount in Bank, would not be of any solace to the claimant.

9. Consequently, the present appeal is allowed to the limited extent that the amount of compensation of Rs. 50,000/- as awarded by the learned Tribunal along with interest as so awarded shall be jointly and severally payable by the owner, driver and Insurance Company. The entire amount of compensation shall be payable forthwith to the claimant.

10. However, Mr. Ahluh, the learned Counsel appearing for the Insurance Company states that as per the law laid down by the Hon''ble Supreme Court in Swaran Singh's case (supra), the Insurance Company be given a liberty to effect the recovery from the owner.

11. In view of the law laid down by the Apex Court in Swaran Singh's case (supra), the request made by Mr. Ahluh is accepted and a liberty is granted to the Insurance Company to take its appropriate remedies against the insured, in accordance with law, before a regular Civil Court.