

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

FAO No.2496 of 2009

Date of Decision: 25.07.2017

Bhira Ram

...Appellant(s)

Versus

Sita Ram and others

... Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. G.S. Kaura, Advocate
for respondent No.2.

Mr. Rohit Goswami, Advocate and
Mr. D.P. Gupta, Advocate
for respondent No.3-Insurance company.

ANITA CHAUDHRY, J.

This is the claimant's appeal aggrieved by the rejection of his petition filed under Section 163-A of the Motors Vehicles Act, 1988.

The records have been received.

The appellant has suffered injuries allegedly on 15.01.2003. It was claimed that he was a conductor on a truck driven by respondent No.1-Sita Ram and when the truck was passing through Tosham it turned turtle, the left leg of the claimant was completely crushed. It was pleaded that he was admitted to the RMC Hospital, Tohana and his thumb impressions on some writing were obtained by respondent No.2. It was pleaded that since injuries were received while the vehicle was in use, therefore, he was entitled to

compensation.

The accident was denied by respondent No.2. Both the parties led evidence and the Tribunal noted the following paras:-

14. *"I have considered the rival contentions. There is no FIR or DDR in the concerned police station regarding the alleged accident, as averred by the petitioner. The petitioner did not mention at the time of his medical examination that he had received injuries on account of use of the offending truck. His relatives were present and they also made statement which is part of medical record Ex.P-1 that they have been made conversant with the injury of their patient and his left leg has been crushed and the bone has been completely smashed. They consented to get the same amputated below knee joint. Their patient had received injury on account of Harrow and they did not intend to initiate any police case and they were fully responsible.*

15. *As already observed, this consent was given by brother Raju, Kitabo wife and Balbir who is brother in law of injured petitioner Bhira. Now it would be unacceptable at this stage that the owner of the offending vehicle got fabricated the proceedings before Medical Officer and did not allow petitioner to take any action. It is also unnatural that petitioner's signatures were obtained and application was moved to claim compensation before Market Committee as his having received injuries in an agricultural pursuits. The initial case of the petitioner, as evident from the medical record is that he had received injuries on account of striking against a Harrow. He did not lodge any court complaint against respondent No.1 till date. He only moved an application to National Human Right Commission on 31.10.2003, which has been*

produced as Ex.P-2/Ex.P-12, after a delay of more than nine months. Petitioner moved another application on National Human Right Commission on 21.04.2004, which is Ex.P-4. When the application Ex.P-2 was sent for enquiry to concerned police station, petitioner did not press the same and stated that he would move petition in the Court. At the time of his initial admission in the hospital as well as at the time of his making statement before the police in the year 2004 that he does not press his application for legal action against the respondent No.1, there was no pressure upon him. There appears to be a collusion between the petitioner and respondent No.1, as parties intend to provide some compensation to petitioner from some extraneous source be it from the market committee or from insurance company of any vehicle. The learned counsel for the petitioner referred to statement of persons recorded by Market Committee that the authorities had also come to conclusion that petitioner had suffered injury in a truck accident and hence the case of petitioner is substantiated as so mentioned in Ex.P-6 and Ex.P-7. However, mere finding of Market Committee that petitioner had received injuries in truck accident would not substantiate his claim against the offending vehicle. It was for the petitioner to prove the same by leading cogent and convincing evidence. The application Ex.P-8 was moved by petitioner to Secretary Market Committee after his claim was rejected by the officials of Market Committee and in that application also he did not been able to prove his case against the offending vehicle by leading any independent witness as he did not lodge any complaint in police and did not make any court complaint. The medical evidence also does not suggest receipt of injury in a truck accident and the initial case of the petitioner is that he had received injuries on

account of Harrow. Hence, use of offending vehicle is not proved in this case. The authority Oriental Insurance Company Vs. Kamla Devi and others 2008(3) RCR (Civil) 12, relied by learned counsel for the petitioner, would not be applicable to the present case as in that case FIR was not registered and it was held by our own Hon'ble High Court that registration of FIR is no criteria to prove the negligence. However, the facts of the present case are distinguishable as in the instant case the petitioner and his attendants had mentioned at initial stage that the cause of injury was no account of striking against a Harrow and not the result of accident case. The deposition of Satyawar PW-4 is also not convincing as he is allegedly witnessed the accident and had removed Bhira Ram petitioner from underneath the offending truck but he did not take the injured to the hospital. The name of PW-4 Satyawar is also not mentioned in applications Ex.P-2/Ex.P-12 or Ex.P-4 of petitioner made to Human Right Commission”.

The statement made by the doctor completely demolishes the case of the appellant. No medical *Ruqa* was sent, the complainant was admitted by his relatives and had declared before the medical officer that he had suffered injuries with an agricultural equipment. No complaint was given to the police, no DDR was lodged and there is no MLR. There was no pressure from any side at the time of admission in the Hospital. It is 10 months later that the complainant sent complaints to the Human Rights Commission. The involvement of the truck is not proved, if it was a case where the truck had turned turtle it was very easy to prove it, some

photographs could have been produced, the police would have been informed. Since the deceased was under the truck, the persons who helped the claimant come out would have arranged a crane to retrieve him. All that evidence is missing. A totally different version has been given in the claim petition, only to claim compensation. There is no merit in this appeal.

The appeal is dismissed.

July 25, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No