

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 4492 of 2011
Date of Decision: 01.3.2017**

Harwinder Singh

.....Appellant

Versus

M/s Balsu Packers and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harish Sharma, Advocate
for the appellant.

Mr. D.R.Bansal, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

The appellant is aggrieved by the dismissal of the claim petition filed by him seeking compensation under the Motor Vehicles Act.

The appellant was driving a Tata vehicle owned by respondent No. 1. An accident occurred which led to injuries on both his legs. The claimant pleaded that the accident had occurred during the course of his employment and the petition was filed under Section 163-A of the Motor Vehicles Act. The claimant had also pleaded that DDR had been lodged at Police Station Parao. The details of the accident were narrated in para 24 of the petition which read as under:-

“x x x x x x x x

At about 12.30 in night of 21/22.4.2007 when the claimant reached in the area of P.S.Parao while driving the said vehicle on slow speed at his correct side, met with an accident with

some another vehicle and the injured/claimant Harwinder Singh received multiple and grievous injuries on his legs and other parts of the body on account of accidental injuries on account of use of motor vehicle during the course of employment with respondent No. 1.

x x x x x x x x

Respondent No.1, which was alleged to be the owner, failed to contest the petition and was proceeded *ex parte*.

The insurance company took up the usual pleas.

The claimant examined himself, Bimal Kumar and Clerk of CMC Hospital to prove the disability certificate.

The claim petition was dismissed and it was held that the claimant had held back the copy of the DDR which would contain first version and the manner in which the accident had occurred and he had also failed to prove that he was an employee of respondent No. 1. It noted that there was no MLR to show the injuries he had sustained in the accident. It also noted that since there was no proof of employment and at the most the claimant may be held to be a borrower and since he had stepped into the shoes of the owner, he was not entitled to any compensation.

I have heard the counsel for the appellant at great length. He has also invited my attention to the evidence led by him.

In the claim petition, the claimant had stated that he was driving the vehicle on his correct side and he met with an accident with another vehicle. He did not disclose the manner in which the accident had occurred and when he stepped into the witness box he made a different statement which finds a recital in the affidavit Ex.PA. There he had stated

that when he had reached P.S. Parao and was driving the vehicle at a slow speed, then he noticed that a tralla was going ahead of him and the driver of the tralla suddenly applied brakes and due to which his vehicle struck against the tralla and the vehicle was damaged and he became permanently disabled.

In the claim petition as well as in the affidavit there is a reference to the fact which shows involvement of another vehicle. No FIR was lodged though the claimant had pleaded that a DDR No. 26 had been registered on 29.6.2007 and there is a reference to it in para 9 of the claim petition and purposely the DDR was not produced.

The claimant also failed to prove that he was an employee of respondent No. 1. He did not summon his employer but chose to take that chance probably he would not have supported him. The onus was heavy upon the claimant and he was to prove that the owner was the employer. Since he had failed to prove this fact, it could be taken that the claimant was a borrower of the vehicle and he stepped into the shoes of the owner. It was also to be shown that some additional premium had been paid to cover the risk of the owner. A reading of Section 163-A of the Motor Vehicles Act makes it explicit that the persons like the claimant would step into the shoes of the owner of the vehicle and in that eventuality the liability to pay the compensation would be either on the insurance company or the owner as the case may be. The owner could not himself be the recipient of the compensation as the liability to pay the same is on him. The proposition is absolutely clear on a reading of Section 163-A of the Motor Vehicles Act. Therefore, the claimant was not entitled to claim compensation under Section 163-A of the Motor Vehicles Act. The claim petition could not be

treated to have been filed under Section 166 of the Motor Vehicles Act as the claimant failed to furnish the details of the vehicle involved. The claimant had held back the DDR and the presumption is that it would not have supported the plea raised by him.

I find no infirmity in the findings recorded by the Tribunal and are affirmed.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

March 01, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No