

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-6262-2017 (O&M)

Date of Decision: 23.07.2019

Rajinder Singh

.... Appellant

Versus

Sanjay Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Ekta Thakur, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

The claimant-appellant has filed the instant appeal against dismissal of his claim petition under Section 163-A of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act') vide judgment dated 18.04.2017 of the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

Briefly, the appellant filed a claim petition under Section 163-A of the Act, for grant of compensation against permanent disability suffered by him, on account of involvement of tipper/truck bearing registration No. PB-65-N-5764, pleading that in the day time of 16.07.2016, he was returning home from Siswan Dam, while driving aforesaid tipper/truck. After reaching near Siswan Dam, he parking his aforesaid tipper/truck by the side of the road, when was removing the jack, all of a sudden, the aforesaid tipper/truck fell on his left arm. As a

result thereof, his left arm crushed above the elbow under the tipper/truck, which later on was amputated. At the time of accident, he was aged around 55 years. Therefore, he was entitled to compensation of ₹50,00,000/-.

Heard.

The learned Tribunal, after holding trial, dismissed the claim petition on following grounds:-

- (i) It is quite unbelievable that the appellant being a trained driver of heavy transport vehicle would do service in a meager salary of ₹40,000/- per annum, contrary to the prevalent prescribed wages under the Minimum Wages Act, 1948, which at the relevant time was ₹8708/- per month.
- (ii) It was a friendly match in between the appellant-claimant and respondent No. 1-Sanjay Singh, inasmuch as, at the time of recording DDR Ex. P-1, name of owner of the offending vehicle was disclosed as Malkiat Singh, but in the claim petition, he was mentioned as Sanjay Singh. Hence, the claim petition was result of fraud and collusion between appellant and owner of the alleged offending vehicle.
- (iii) Since, income of the appellant as per his deposition was definitely more than ₹40,000/- per annum, therefore, petition under Section 163-A was not maintainable.

For brevity, relevant para Nos. 11 to 18 of the impugned Award are reproduced as under:-

“11. That is what precisely has been claimed by the claimant. It has been claimed in the claim petition that the annual salary of the claimant is Rs. 40,000/- per annum. To prove the same there is self serving statement of Rajinder Singh the claimant. He has deposed that he used to receive Rs. 40,000/- per annum for driving heavy vehicle. As to from whom he used to receive this meagre salary, which is far far lowest than the prescribed norms under the Workmen Compensation Act. Statement of the owner of the truck in question was must to have been recorded. At this stage, it is also significant to observe that as to who was the owner of the vehicle, which was used to be driven by the claimant? The court leave this discussion here to be taken up subsequently.

12. Right now this court is ceased of the fact regarding the salary of the claimant. The claimant has not examined the owner of the vehicle in question, who could have deposed before this court regarding the salary being paid to the claimant. In the absence of statement of pay master, the self serving statement of the claimant is not at all believable. It is not believable that in these days, the driver of heavy vehicle would earn Rs. 40,000/- per annum. This seems to unreasonable. This case has been coined just to

bring the same within the provisions of Section 163-A of the Motor Vehicles Act, for which Rs.40,000/- per annum is the outer limit for earning capacity.

13. The matter does not end here. The claimant while preferring this petition was not comprehending that some evidence to rebut the evidence of the claimant would also to be led by the respondent no.2, because the claimant as well as owner of the vehicle were hands in glove. The possibility of which is not ruled out, because the alleged owner of the truck in question has not come to contest the case and has been proceeded against exparte.

14. The insurance company has examined RW-2 Vinod Kumar, who is Steno in the office of Labour Commissioner, Sector 30-B, Chandigarh. He has deposed that he has brought the summoned record pertaining to minimum wage rate for each category of employees covered under the Minimum Wages Act, 1948 for the period 1.4.2016 to 30.9.2016. As per record, the minimum rate of wages in respect of driver, who drives heavy vehicle, as on 16.7.2016 was Rs. 8708/- per month. which falls in the category of semi-skilled labour. He has proved on record Consumer Price Index of Chandigarh centre for the half year ending March 2016 id est rates of minimum wages as on 16.7.2016 Ex.R2/1 and has deposed that the monthly wages of Rs. 8708/- is for 26 days. He has further deposed that no

employer can pay less than Rs. 8708/- per month to their driver or any other employee, who is covered under semi skilled category. Still more, the cross examination as conducted upon this witness rather is suggestive of the fact that the driver of the said category will earn even more. While cross-examination was being conducted it was lost sight of the fact that the present claim petition is under Section 163-A of the Motor Vehicles Act. In the cross examination suggestions are to the effect that the income of the driver can be taken to be more than the minimum wage rate i.e. Rs.8708/- per month.

15. It has been suggested that in case the driver will not observe holiday on Sunday and will continue to work on sundays also, he will get double the salary for the said days. Even further suggestion has been given to the effect that in case of overtime done by the driver upto four hours, he wil again get double the salary as shown in price index Ex.RW2/1.

16. This goes to show that man may tell lie but circumstances do not. The truth has surfaced to the ground that in the case in hand, the income of the claimant cannot be taken as meagre of Rs.40,000/- per annum. That being so the claim petition cannot be entertained under Section 163-A of the Motor Vehicles Act.

17. Coming to the ownership of the vehicle, still more,

very smartly, the respondent no.1 has been arrayed as owner by name as Sanjay Singh. If the DDR is gone through, it would reveal that while lodging the DDR Ex.P1 name of the owner of the vehicle has been shown as one Malkiat Singh son of Late Gurbax Singh. This belies the very case of the claimant. It is clear that some manipulations have been made while seeking claim.

18. Still further, to fulfill the conditions of the insurance, the permit of the vehicle in question should have been placed on record to show whether the vehicle where-ever it was plied, was not violating the terms and conditions of the permit. But the owner of the vehicle in question, who has been arrayed as Sanjay Singh instead of Malkiat Singh as shown in the DDR was proceeded against exparte. So there was none to whom it could have been directed to produce the valid permit.”

Having gone through the above findings and submissions raised by learned counsel for the appellant, this Court is not inclined to differ with its well reasoned findings, inasmuch as, the same are based on correct appreciation of evidence. The claim of appellant is completely false.

Hence, the instant appeal, being meritless, is dismissed.

July 23, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No