

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

**FAO-2742-2001 (O&M)
Reserved on:22.02.2024
Pronounced on:05.03.2024**

Charanjit Singh

... Appellant

Vs.

Jarnail Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. R.P. Singh Ahluwalia, Advocate for the appellant.

Ms. Himani, Advocate for
Mr. Ravinder Malik, Advocate for respondent No.1.

Mr. Pardeep Goyal, Advocate,
for respondent No.3/Insurance Company.

...

SUKHVINDER KAUR, J.

1. This appeal (FAO-2742-2001) has been filed by the appellant/claimant for setting aside of the award dated 30.11.2000 passed by the Motor Accident Claims Tribunal, Ambala, vide which the claim petition filed by the appellant/claimant was dismissed.

2. The relevant facts as per case of the claimant are that on 14.12.1997, claimant – Charanjit Singh was travelling in a truck bearing registration No.PCI-4789 which was being driven in a rash and negligent manner by respondent No.1 and caused the accident near village Mansurpur on Khatauli Road, about 10 K.M. from Muzzafar Nagar. Claimant/injured was taken to hospital at Muzzafar Nagar where his left leg was plastered and he remained admitted there for 3 days. On

17.12.1997, he was brought to Ambala City and was admitted at Mann Orthopedic Hospital, where he remained under treatment upto 10.01.1998. As the claimant remained on bed, so the accident was not reported to the police. The claimant was 30 years old at the time of the accident and had been kept as helper/cleaner by respondent No.2 on the truck in question and he was earning Rs.3000/- per month. The claimant had spent about Rs.50,000/- to Rs.60,000/- on his treatment, medicines, transportation, special diet etc. He suffered great physical and mental pain due to the injuries caused in the accident.

3. Respondent No.1 driver of the tanker bearing registration No.PCI-4789, respondent No.2 - owner and respondent No.3/Insurance Company of the said oil tanker were impleaded as respondents in the claim petition. Respondents No.1 and 2 filed a joint written statement by raising preliminary objections regarding the maintainability of the claim petition. On merits, it was pleaded that no accident of truck bearing No.PCI-4789 had taken place on 14.12.1997 at village Mansurpur on Khatauli Road as alleged; that the claimant had not been employed by respondent No.2 as a cleaner/helper, so question of the alleged accident did not arise; that the petition was false and is bad for mis-joinder and non-joinder of necessary parties; that the claim petition has been filed by the claimant on false and frivolous grounds just to get compensation; factum of accident, injuries sustained and money spent on accident was also denied and dismissal of the claim petition was prayed for.

4. Separate written statement was filed by respondent

No.3/Insurance Company by taking preliminary objections that the claim petition was not maintainable as no accident had taken place as alleged in the claim petition. If any accident was proved on record, then the claimant was travelling in oil tanker bearing No.PCI-4789 on payment of charges as gratuitous passenger in violation of the law, terms and conditions of the insurance policy. Claim was bad for non-joinder and mis-joinder of necessary parties and was filed on false and frivolous grounds in collusion with respondents No.1 and 2 in order to get money from respondent No.3. Respondent No.1 was not holding a valid and effective license at the time of the accident and he was driving the truck in question in contravention to the policy of the insurance company. On merits, age and income of the claimant, accident, injuries sustained and money spent on the treatment were denied and dismissal of the claim petition was prayed for.

5. On the basis of the pleadings of the parties, issues were framed. Both the parties were given ample opportunities to adduce their evidence to discharge the onus behind the issues placed upon them.

6. After considering the evidence available on record and the submissions made by learned counsel for the parties, the Tribunal dismissed the claim petition vide the impugned award dated 30.11.2000.

7. Feeling dissatisfied with the award dated 30.11.2022, the appellant/claimant has preferred the instant appeal.

8. I have heard learned counsel for the parties and have perused the relevant record.

9. Learned counsel for the claimant/appellant has contended that

while appearing as his own witness, it has been duly proved on record by the claimant that he had sustained injuries in the road side accident on 14.12.1997 while travelling in truck bearing registration No.PCI-4789. The driver of the said truck was responsible for causing the accident as he was driving the said truck in a rash and negligent manner. He has further contended that the oral evidence adduced by the claimant has remained un rebutted, but despite that the Tribunal has erred in dismissing the claim petition. While relying upon the decision of the Hon'ble Supreme Court in **Rajinder Pershad (dead) by L.Rs. Vs. Smt. Darshana Devi, AIR 2001 SC 3207** and **Ishwar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera & another, AIR 1999 SC 1341**, he has submitted that as driver/respondent No.1 of the offending truck did not appear in the witness box to deny that he was not the author of the accident, so adverse inference is to be drawn regarding the same. He has further argued that the appellant/claimant has also proved on record that he had been employed as a cleaner/helper by respondent No.2. But the entire approach of the Tribunal to the facts and circumstances of the case was erroneous and it has not properly appreciated the law and facts involved in the present case. He has urged that there was no motive of the claimant to falsely implicate the respondents and the offending vehicle in the present case. He has vehemently contended that the registration of the FIR is not a pre-requisite for filing a claim petition and as the claimant remained admitted in the hospital for a long time, so the matter regarding the accident could not be reported to the police. So, on this account, the claim

petition cannot be held to be bad. He has further urged that while appearing as PW3 claimant had deposed in detail regarding the manner of happening of the accident, his sustaining of injuries in the said accident and the treatment and expenses incurred for the same and has prayed that the impugned award may be set aside and the claim petition of the claimant may be allowed by awarding fair compensation.

10. In order to substantiate his pleas, claimant himself had stepped into the witness box as PW3 and had deposed that he was working as a helper with Lehal Transport Company and was getting salary of Rs.3000/- per month. On 14.12.1997, when he was accompanying respondent No.1 as an assistant/cleaner on the said truck, then the said truck met with an accident due to rash and negligent driving of respondent No.1. He sustained injuries and his right leg was badly fractured in the said accident and thereafter he was taken to Muzzafar Nagar hospital, where he remained admitted for three days and from there he was shifted to Dr. Mann's Hospital, Ambala, where he again remained admitted for three months. He was operated upon thrice for the injuries and he remained confined to bed for more than 1½ years. His brother had spent about Rs.80,000/- upon his treatment. Due to the injuries sustained in the accident, he was not able to walk properly and could not run and squat on the ground. He was also terminated from his job. He was medically examined by the Board of Doctors to assess the disability and he had become disabled to the extent of 20% due to the injuries sustained by him in the said accident. Owner of the truck had also taken the claim

from the Insurance Company, as the truck had also been damaged in the accident. He brought on record medical bills and receipts of payments and record of treatment Ex.P1 to P-3. In his cross-examination, he has stated that driver of the truck was known to him for the last one year and was his co-villager. No document was written when he was appointed as cleaner/helper at the truck bearing registration No.PCI-4789. Salary was paid to him by respondent No.2 at his residence. He had not filed any case in the labour Court against the owner and driver of the truck. He could not produce day to day expenditures on his treatment. He could not produce details regarding incurring of expenditure of Rs.80,000/- on his treatment. He could not tell the name of the person, who was sent by the Lehal & Company for his appointment in the said concern. He remained posted as a helper/cleaner with Lehal and Company from January, 1997 onwards. The salary was being paid to him through Jarnail Singh/respondent No.1. He had never met the owner of the company. He did not report the accident to the police. He was badly injured and was admitted in the hospital at Muzzafar Nagar. He had not filed any complaint regarding the accident. He did not report the matter to the higher authorities for inaction of the police. He denied the stand that accident in question had been caused by the bus and voluntarily stated that the accident took place as truck driver tried to save the bus coming from the opposite side.

11. From the pleadings on record and the aforesaid deposition of the claimant appearing as PW3, it transpires that neither in the claim petition nor in his testimony, it has been disclosed by the claimant the

manner in which the accident in question had taken place. In order to appreciate that the accident in question had been caused due to negligent driving of respondent No.1 as alleged by the claimant, it was essential to explain the manner and the circumstances which led to happening of the accident in question and then to prove the same before the Tribunal. Though in order to prove the factum of the accident registration of FIR is not a pre-requisite, but even then the other sufficient material should be on record to prove the factum of the accident and to prove the rashness and negligence of driver of the offending vehicle for causing the said accident, which is lacking in the present case. There is no corroboration at all to the version of the claimant. Admittedly, the accident had not been reported to the police. Even if the accident could not be immediately reported to the police due to sustaining of injuries by the claimant and his being admitted in the hospital due to the said injuries, but even thereafter the accident had not been reported to the police and no FIR/DDR to this effect has been produced on record. Besides the bare statement of PW3/claimant himself, there is nothing on record to prove the happening of the accident on 14.12.1997 as alleged by the claimant in which he allegedly sustained injuries. Though ample opportunities were provided by the Tribunal to the claimant for adducing his evidence, but no record from the Muzzafar Nagar Hospital has been produced, where the appellant/claimant to have remained admitted immediately after sustaining of the injuries in the alleged accident. That hospital record was very material piece of evidence which has not been produced and has been withheld. So

in the absence of any such material on record, it is not proved that the accident as alleged by the claimant had taken place on 14.12.1997 due to rash and negligent driving of respondent No.1 in which claimant had sustained injuries. As no record from the hospital at Muzzafar Nagar and Ambala City had been produced, so it is also not proved that the injuries due to which he claims to have remained admitted in the said hospitals, were the result of the accident in question. This fact has also not been proved on record that claimant was working as helper/cleaner upon the offending truck and he had been so employed by respondent No.2. During his cross-examination, he could not tell even name of the owner with whom he was allegedly working.

12. I do not agree with the contention raised by learned counsel for the appellant that adverse inference is to be drawn as respondent No.1 had not stepped into the witness box to deny that he was the author of the accident. The onus to prove the accident in question and happening of the accident in question due to rash and negligent driving of the offending truck was upon the claimant. So when the claimant could not prove the happening of the accident and rashness/negligence of respondent No.1, then it is immaterial if respondent No.1 has not stepped into the witness box.

13. Thus, correct findings have been returned by the Tribunal after proper appreciation of the evidence on record, while passing the impugned award. When the claimant has failed to prove the factum of the accident as well as the rashness and negligence of respondent No.2 while

driving the offending vehicle and causing the accident in question, then the claim petition has been rightly dismissed by the Tribunal.

14. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned award. Hence the instant appeal is dismissed.
15. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)

JUDGE

05.03.2024

harjeet

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No