



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

FAO-1159-2010 (O&M)
Date of Decision: January 22, 2025

Harvinder Singh @ Binder Singh

...Appellant

VERSUS

Surjit Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ekta Thakur and Ms.Shikha, Advocates
for the appellant.

Mr.Vinod Chaudhri, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant Harvinder Singh alias Binder Singh, thereby, assailing the Award dated 28.08.2009, vide which, the claim petition filed by the appellant-claimant, for seeking compensation, on account of injuries sustained, in a motor vehicular accident, was dismissed.

Initially, four claim petitions, arising from the same accident were filed before learned Tribunal and the same were consolidated and decided vide Award dated 28.08.2009. One of the claim petition was filed by claimant Harvinder Singh @ Binder Singh.

On appraisal of the evidence, brought on record, two of the claim petitions were allowed and the compensation was awarded, whereas,



claim petition of appellant-claimant Harvinder Singh @ Binder Singh and the other one, were dismissed in toto.

Feeling aggrieved, the appellant-claimant has filed the present appeal.

The concise facts, to be noticed, are as follows:-

That, on 16.06.2004, appellant-claimant Harvinder Singh @ Binder Singh together with various other occupants, was going in a truck bearing registration No.HR-06-4406, driven by respondent No.1-Surjit Singh. When they reached in front of petrol pump on G.T. Road, at Rampur Kalan, Tehsil Derabassi, certain mechanical defect developed in the said truck, as a result whereof, it became out of control and struck against the tractor bearing registration No.PB-39-3684, going on the same G.T. Road,, as a result thereof, the trollea attached with truck, got entangled with the truck and the truck took sudden spin and overturned towards the driver side. However, with the help of the people, who had gathered at the site of the accident, the truck was put back on its wheels, which thereafter, strayed into the nearby fields, which were at the lower level in comparison to the G.T. Road.

It is specific claim of the appellant-claimant Harvinder Singh @ Binder Singh that he was 21 years old and was mechanic of the three-wheeler and as a result of the aforesaid accident, he had sustained injuries.

All the four claim petitions, arising from the same accident, were consolidated and specific issues were framed, relating to various claims. To substantiate the version, the claimants of the other claim petitions, namely Jogindro, Sukhjinder Singh and Akalu had stepped into witness box as PW-1 to PW-3. Thereafter, no evidence, as such led and the



evidence was closed by order by learned Tribunal on 07.06.2007. However, in additional evidence, learned counsel for the appellant-claimant had tendered into evidence, the disability certificate of injured Harvinder Singh @ Binder Singh as Ex.PX. Even, the documentary evidence was adduced by the respondents.

On appraisal of evidence, so far as, present appellant-claimant is concerned, learned Tribunal observed that he did not make appearance in the witness box, nor he led any evidence to prove his claim and consequently, while holding the accident to have taken place, relating to the other victims, on account of use of motor vehicle bearing registration No.HR-06-4406, qua the present appellant-claimant, it was held that issue No.1, relating to the factum of accident and manner of taking place of the same, was decided against him. Also, it was observed that there is disability certificate Ex.PX, coming on record, which is not sufficient to hold that the appellant-claimant received injuries in the accident in question and thus, the claim petition of Harvinder Singh @ Binder Singh was dismissed.

Feeling aggrieved, the appellant-claimant had filed the present appeal.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the appellant that since all the claim petitions had arisen from the same accident, learned Tribunal could not bifurcate the observations made, with regard to the factum and manner of taking place of the accident and reach the conclusion about the accident to have taken place, on account of use of the motor vehicle bearing registration No.HR-06-4406 and award compensation



to claimants of the other claim petitions and deny the same to the present appellant-claimant. In fact, it is submitted that from the evidence adduced, it stands amply established that appellant Harvinder Singh @ Binder Singh, was the occupant of the ill-fated vehicle, at the relevant time and he was in the truck to facilitate loading and unloading of the goods. Even, his disability certificate, as such, has been proved as Ex.PX. In the light of the same, the fact of sustaining of injuries by him, stands amply established and therefore, the compensation, ought to have been granted to appellant-claimant Harvinder Singh @ Binder Singh also.

On the contrary, learned counsel for the insurance company has refuted the claim of the appellant-claimant. In fact, it is submitted that there is no satisfactory evidence, coming on record, about appellant-claimant Harvinder Singh @ Binder Singh, to be the occupant of the truck in question, at the relevant time and precisely, on this account, he has not made appearance before learned Tribunal and not challenged the order of closing of the evidence by order, by the Tribunal. Even though, the disability certificate Ex.PX has come forth, in the additional evidence, but however, learned counsel submits that it does not stand sufficiently connected to the injuries (if any) sustained in the accident in question.

It is submitted that the accident had taken place on 16.06.2004 and Ex.PX was obtained on 19.10.2007. It is difficult to ascertain that the 'scapula fracture right side', as observed in the disability certificate, relates to the injuries caused to the appellant, in the accident in question. To prove this, it was required, on the part of Harvinder Singh @ Binder Singh to have stepped into witness box and to amply establish the same. Since, he has not



stepped into witness box, the version put forth by the appellants, is highly doubtful and therefore, learned Tribunal has rightly denied the compensation to the appellant-claimant.

In view of the submissions aforesaid, it is pertinent to mention that in the claim petition, appellant-claimant had stated about himself to be mechanic of three-wheeler and he stated to be self-employed. In this regard, much emphasis has also been laid upon the affidavit of Jogindro, who had stepped into witness box as PW-1. In the said affidavit, she had stated that Harvinder Singh was also going in the truck and further, she stated that he was engaged for loading and unloading of the goods and he was part-time employee of her son. However, no document relating to his employment, as such, has come on record.

Now, let us consider the FIR Ex.P1/1. This was got recorded by Surjit Singh-respondent No.1, who is owner-cum-driver of the said vehicle. In the same, he makes mention of various other persons, to be present in the truck, at the relevant time and one of the name mentioned is Binder Singh. Though, complete name of appellant, as such, has not been mentioned, but even, in the light of the recitals of the FIR, which is the first version of taking place of the accident coming forth, it is considered that Binder Singh is the present appellant-claimant only, then also, at the maximum, it states about the appellant to be occupant of the truck. However, nowhere it is stated that he was employed for the purposes of loading and un-loading of the goods. Rather, respondent No.1 in the FIR stated that he along with his other relatives and acquaintances was present in the truck. Even if, for any purposes, it is taken that appellant-claimant was occupant of the truck, even



then, in the light of the sketchy evidence, coming on record, at the maximum, the factum and manner of taking place of the accident, as concluded by learned Tribunal, with regard to the other victims is concerned, can be concluded.

In the light of the aforesaid, still it was required on the part of the appellant-claimant to establish about the sustaining of injuries, on account of the accident in question. Qua the same, the sole document relied upon by the appellant is the disability certificate Ex.PX. It stated about Harvinder Singh @ Binder Singh to be a case of 'scapula fracture right side' and the disability has been assessed to be 6%. This disability certificate has been simply tendered into evidence. No doctor, as such, has been examined. Furthermore, it was issued on 19.10.2007 i.e. much after taking place of the accident on 16.06.2004. Therefore, it cannot be said that the injury mentioned as therein, relates to the injury (if any), sustained by the appellant-claimant, in the accident in question.

For this, it was required for the appellant, at least to himself step into the witness box and depose about the detail of the injuries, which could be co-related to the injury, as stated in the disability certificate. However, it has not been so done. Even, no member of the board of doctors, who examined the appellant-claimant, for the purpose of assessment of the disability, has been examined and no opportunity was given to the respondents, to conduct cross-examination to know about the exact age of the injury and the extent of disability suffered.

Moreover, it is pertinent to mention that evidence of the appellant-claimant was closed by order on 07.06.2007, but however, he had



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not bothered to challenge the order of closing of the evidence by order, nor had made a request for his examination again, before learned Tribunal. Though, in additional evidence, disability certificate has been tendered, but he has not bothered to seek permission to appear in the witness box.

In the light of the aforesaid facts, the fact of receipt of injuries by the appellant-claimant, in the accident in question, as such, does not stand established and precisely, on this account, learned Tribunal has correctly denied the compensation to the appellant-claimant.

Hence, the appeal sans merit and is hereby dismissed.

January 22, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No