
(2008) 12 P&H CK 0077
In the Punjab And Haryana At Chandigarh

Radhey Shyam

APPELLANT

Vs

Prem Kumar and Others

RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Citation : (2009) 153 PLR 459 : (2009) 3 RCR(Civil) 696

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The claim for compensation for injuries suffered in an accident was dismissed on the ground that the petitioner had not proved that the injuries were on account of an accident involving a motor vehicle. The claimant before the Tribunal is the appellant before this Court.

2. The essential ground on which the Tribunal dismissed the petition was that the petitioner had not given any complaint to the Police and there is no acceptable evidence that there was a nexus between the injuries and the motor accident. The petitioner had a cogent case to narrate in his oral evidence:

The petitioner was one of the Loadmen working in the truck bearing registration No. HR-05GA-0218. According to him he had got down from the truck just at the place where the truck was to be weighed on the weigh-ridge. After getting the empty truck weighed the petitioner got into truck again and at that time the driver started the truck suddenly, when the petitioner fell down and the truck ran over his right foot crushing his leg. According to him, the accident had arisen only on account of the negligent conduct of the driver in starting the vehicle even before petitioner had fully gotten into the truck. The petitioner stated in his evidence that he did not inform the Police, because the owner of the truck, who was his employer assured him to pay for the medical expenses and further that he had to work and he did not want to take the risk of giving a complaint against him. This portion of evidence is most natural one and one cannot expect the

daily rated a loadman to lodge a complaint against the driver of his own employer, if only he wanted to continue in his employment. One Sham Sunder had been examined as PW-3, who was the person who accompanied the petitioner at the time when the scrap was being loaded into the truck and he has state that the petitioner slipped under the front wheel of the offending vehicle driver. He has also stated that he was taken into the hospital from there and but they did not report the matter to the Police. In the cross-examination it has been elicited as follows:

I was sitting in the cabin of the truck and the other 4 or 5 persons of the labourer (Sic) were sitting in the body of the truck, when Radhey Sham slipped, I was inside the cabin of the truck.

3. The driver of the truck himself has been examined as RW-1. He has admitted the accident but only explains the accident as having arisen in the following words.

Before unloading the truck I had gone to check the weightage of the loaded truck but when I had gone at that time one Radhey Sham are also accompany me in the truck (Sic). After noting the weight of truck by Radhey Sham, he was also to sit in the truck and before sitting in the truck, Radhey Sham due impact of sudden and starting of the offending truck by me he fell down and his right leg went under the front wheel of the conductor side of the truck,(sic)

4. It is nor where suggested to the driver that the accident itself had not taken place. On the other hand, the specific suggestion is that the accident in question took place due to the sole negligence attributed to the driver. It is precisely on occasion like this where the owner shall bear vicarious liability and the Insurance Company will also become liable as an insurer. If the Tribunal had properly analyzed the case, it could not have dismissed the petition. It got carried away by the fact that since the accident had not been reported to the Police Station, the accident itself could not be true. Although an averment of collusion has made in the written statement of the insurer, it was not so suggested at the time of trial and especially at the time when the drive had been examined. I have already pointed out that the petitioner had a strong reason why he did not give a complaint to the police namely that he was Loadmen in the vehicle and he believed that the owner would pay all his medical expenses. Under the circumstances I accept the evidence as credible and worthy of acceptance. I accordingly find that the accident arose only due to the rash and negligent act of the driver in starting the vehicle even before the Loadmen had got into the cabin and the petitioner is entitled to make the claim under the Motor Vehicles Act.

5. The nature of injuries suffered in the accident had been spoken by the petitioner himself. He has stated that his right leg had been put in plaster-cast for a period of one month and he had spent about Rs. 25,000/- for his treatment. Dr. Sachdeva had been examined PW-1 and states that he remained admitted in the hospital between 29.11.1999 to 2.12.1999 and that he has

charged Rs. 2,870/- towards hospital treatment. The doctor stated that there had been no fracture but there was some internal injuries near the knee and that was the reason for applying plaster of paris upon his leg. The Tribunal itself had noted that the claimant certainly remained in bed for a period of more than 20 days. The tribunal had considered the relevant evidence and rendered a finding that the petitioner would have incurred an additional amount of Rs. 5,000/- as medical expenses. The Tribunal has also stated that the petitioner would have been put to a loss of income of at least Rs. 2,000/-. The Loadmen who has to carry weight on his back and walk could not have been expected to done his work with his painful knee that had been injured. Having regard to the nature of injury spoken by PW-1, I assess the fact that the petitioner would not have been able to work for 3 months and would not have been able to work for 3 months and would put to a loss of income of Rs. 6,000/-. I award Rs. 2,500/- as special diet, estimate an amount of Rs. 5,000/- for pain and suffering and also allow Rs. 2,500/- towards transportation. The value of the services of the attendant is estimated at Rs. 2,000/-. In all the petitioner would be entitled to Rs. 23,000/-.

5. In the circumstances the petitioner shall be entitled to an award of Rs. 23,000/- with interest at the rate of 7.5% from the date of petition till the date of payment against the Insurance Company.

6. The appeal is allowed in part of the above terms.