

(2011) 05 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1488 of 2000 (O and M)

Ranjit Singh

APPELLANT

Vs

Gurmit Singh and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 05 P&H CK 0078

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is against the decree of dismissal of the petition for compensation. The Petitioner suffered an amputation of his leg above knee in an alleged accident involving the first Respondent's vehicle. The claimant contended that he was a Cleaner in the truck of first Respondent and the accident took place when the vehicle turned turtle and he received serious injuries. The Petitioner rest contended with his own evidence that he was a Cleaner and the accident took place on account of a motor accident and examined also a Doctor to say that his leg was amputated and the disability was 65%.

2. The Petitioner was definitely entitled to favorable consideration, if only appropriate evidence had been let in to show that there was an involvement of the Respondent's vehicle bearing registration No. PB-12-A-9885. The driver as well as the owner of the truck had been made parties and filed statements contending that there was no such accident. In the statements, it was however accepted that the claimant was working as a Cleaner under the second Respondent but that was before the accident.

3. When the Petitioner gave evidence, he gave graphic details of when and how the accident had taken place. He had stated that he was coming from Raniganj to Gobindgarh in the truck and at that time the first Respondent was driving the truck. When the vehicle reached near Handia, the driver applied the brakes and

the vehicle turned turtle. He also gave evidence that the truck was being driven at a fast speed and at the time of accident, he was sitting on the Cleaner's seat. He gave evidence to the effect that he was hospitalized at Handia and thereafter, referred to Rajindera Hospital, Patiala. The Doctor PW-2 had also given evidence to the effect that the Petitioner had been referred from the hospital near Allahabad and it was entered in the record as a case of road accident. When the Petitioner himself was stating that the owner had colluded with the police and ensured that no case was registered, it was begging the question to deny the relief, that a case had not been registered with the police. The Petitioner had given a reason as to why it was not registered. If the accident was untrue and there had been no involvement of the vehicle, it was imperative that the driver and the owner of the vehicle must have been examined to deny the accident and the involvement of vehicle. Even in the cross-examination of the Petitioner, it was only elicited that the Petitioner did not make any complaint to the police immediately after the accident. In a case where the injury was as serious as requiring an amputation, the cross-examination was meaningless that he did not immediately lodge a complaint to the police. It must be noticed that the Petitioner was a Cleaner and an illiterate person. If his evidence was to be put on a scale for appraisal, it could be diluted by a finding against him, only if the owner and the driver had given evidence about the non-involvement of the vehicle. It was not again the case of Insurance Company that there had not any collusion between the Petitioner, the driver and the owner. On the other hand, the owner was taking a defense by denying the accident but did not take courage either to put himself or the driver in Court to give evidence denying the Petitioner's version. I would, therefore, find that the Respondent's vehicle had in fact been involved in the accident and would hold that the accident had taken place on account of rash and negligent driving of the first Respondent driver.

4. The appropriate remedy in a situation like this must have been to file a petition for compensation under the Workmen's Compensation Act. He gave evidence to the effect that he was earning Rs. 2,000/- per month. I have taken the same and apply the scales of compensation as provided by the Workmen's Compensation Act to hold that the compensation would be Rs. 1,44,000/- (Rs. 2,000/- x 50% x 65% x 222.71). The amount shall also attract the interest @ 12% p.a. from the date of filing of petition till the date of payment.

5. The liability shall be on Respondents No. 1 and 2, but having regard to the fact that there was a valid policy of insurance with the National Insurance Company, the Insurance Company shall be jointly liable and the claimants shall be entitled to a right of enforcement of the claim against the third Respondent-insurance company.

6. The award is set aside and the appeal is allowed to the above terms.