

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3344 of 2013 (O&M)
Date of Decision: May 26, 2015

Mrs.Vijay Batra

...Appellant

Versus

Punjab Roadways, Nawanshahar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Atul Nehra, Advocate
for the appellant

Mr.N.K.Verma, Senior D.A.G, Punjab
for respondents No.1 and 2.

INDERJIT SINGH, J.

CM No.13843-CII of 2013

Applicant-appellant Mrs.Vijay Batra has filed this application under Section 173 of the Motor Vehicles Act, 1988 read with Section 5 of the Limitation Act for condonation of delay of 1990 days (excluding 90 days of limitation) in filing the appeal.

It is mainly stated in the application that claimant-applicant had suffered serious head injury in the accident. She remained in PGI for more than a month and had to undergo life saving brain surgery. After the surgery, the claimant survived but became disabled and dependent due to full body disability. Her disability is certified to be 34% full body, both physical and mental. It is further stated that the

Award was passed on 10.09.2007 by learned Motor Accidents Claims Tribunal, Chandigarh. The claimant had no knowledge of passing of the said order as none was appearing on her behalf and she also did not receive any copy of the order. It is also stated that even claimant's husband is more than 65 years old, who had to attend the claimant, in addition to house and shop and he was unwell and depressed and could not attend the Court proceedings. It is further stated in the application that applicant during November 2011 learnt about the dismissal of the claim and then got applied for the certified copy of the order and after collecting the record of PGI, FIR and record of the trial Court, this appeal has been filed. It is also stated in the application that if the delay is not condoned, then the applicant-claimant will suffer irreparable loss.

Notice of this application was given and learned State counsel appeared on behalf of respondents No.1 and 2 and filed reply contesting the application. In the reply, it is submitted that claimant has got no prima facie case nor the balance of convenience lies in her favour and appeal is hopelessly barred by time and deserves to be dismissed.

After hearing learned counsel for the applicant-appellant as well as learned State counsel, I find that Annexure A-2 is the medical certificate showing head injury following RSA with low mentation and pain in back and lower limb on walking and it is stated that she is physically handicapped and has 34% impairment in relation to whole body. The version given in the application that claimant has

received head injury and declared physically and mentally handicapped, is corroborated by this document Annexure A-2. The perusal of the Award also shows that none has appeared on behalf of the claimant Vijay Batra and the Tribunal decided the claim petition on merit.

As the claimant Vijay Batra has not engaged any counsel nor any person has appeared on her behalf, therefore, there is nothing on the record to show that the applicant was knowing regarding the ex parte Award passed by the Tribunal in her absence. There is no limitation regarding filing of the claim petition.

Keeping in view the averments made in the application, I find that there are sufficient grounds and explanation given by the applicant for condoning the delay. If the delay is not condoned, then the applicant, who suffered injuries in the road side accident, will suffer loss. In no way, it can be held that it is case of gross negligence nor there is anything on the record to show that applicant has earlier come to know regarding the Award passed by the Tribunal.

Therefore, in the interest of justice, the present application is allowed. The delay of 1990 days in filing the appeal is condoned.

FAO No.3344 of 2013

Appellant Vijay Batra has filed this appeal against respondents Punjab Roadways, Nawanshahar, State of Punjab owners of bus bearing registration No.PB-12C-9819 (offending bus) and Amrik Singh, driver of offending bus (later on his LRs were impleaded), challenging the impugned Award dated 10.09.2007

passed by learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal'), vide which the claim petition filed by the appellant-claimant has been dismissed.

The brief facts of the case are that claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents Punjab Roadways, Nawanshahar, State of Punjab owners of bus bearing registration No.PB-12C-9819 (offending bus) and Amrik Singh, driver of offending bus, by stating that on 27.02.2002, Smt.Geeta was going on Kinetic Honda Scooter bearing registration No.CH-01P-5861 from Sector 40 to Bus Stand Sector-43, Chandigarh. Her sister Smt.Vijay Batra was riding pillion. When they reached near Kajheri Chowk, a bus bearing registration No.PB-12C-9819 came from behind and it struck the scooter from behind. The bus was being driven by its driver Amrik Singh in a rash and negligent manner. Due to the accident, both the occupants of the Kinetic Honda received serious injuries. It is further stated in the claim petition that the claimant-appellant was 49 years old at that time. She was assisting her husband at his shop and earning about ₹3500/- per month. She pleaded that she spent about ₹60,000/- on medical expenses.

Upon notice, respondents No.1 and 2 filed joint written statement and denied that accident occurred due to rash and negligent driving of the bus. They pleaded that the bus was being driven at a slow speed and on the left side of the road. When the bus was going to enter the Bus Stand, then Geeta brought her scooter all

of a sudden by driving it rashly and negligently on the road with a view to cross the same, without taking notice of the approaching vehicles on the road and they dashed the scooter against the bus.

None appeared on behalf of the claimant-appellant nor any evidence has been produced. Learned Tribunal vide Award dated 10.09.2007 dismissed the claim petition of the claimant-appellant.

After hearing learned counsel for the appellant as well as learned State counsel and have gone through the record.

I find that as per the documents placed on the record, especially Annexure A-2, claimant-appellant suffered 34% permanent disability of the whole body i.e. physically and mentally. It is also argued by learned counsel for the appellant that this claim petition could not be pursued due to the serious injuries suffered by the claimant and her husband being old person and also being unwell and under depression.

After going through the record, I find that no opportunity has been availed by the claimant-appellant to lead evidence due to the fact that claimant received serious head injuries and suffered permanent disability physically and mentally.

In view of the facts and circumstances and in the interest of justice, the claimant-appellant should be given opportunity to lead evidence and to prove her case. If the matter is not remanded back, then the appellant will suffer loss and her right to recover compensation under the Motor Vehicles Act for the injuries, which she has received, shall be seriously prejudiced.

From the above, I find merit in the present appeal and the same is allowed. The impugned Award dated 10.09.2007 passed by the Tribunal is set aside. The matter is remanded back to the Tribunal for disposal as per law after giving notice to the parties as well as opportunity to lead evidence and of being heard.

May 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE