

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

F.A.O.No.4988 of 2013

Date of Decision: 16th July, 2015

Akash

...Appellant

Versus

Sushil Kumar & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.J.S.Cooner, Advocate,
for the appellant.

Mr.R.K.Saini, Advocate,
for respondent Nos.1 and 2.

Mr.R.K.Bashamboo, Advocate,
for respondent No.3.

Naresh Kumar Sanghi, J.(Oral)

Challenge in the present first appeal against order is to the Award dated 28.02.2013 passed by learned Motor Accidents Claims Tribunal, Panchkula, (for brevity “learned Tribunal”) whereby the claim petition filed by the appellant-claimant, Akash, aged about 10 years, was dismissed for want of evidence.

At the outset, learned counsel for the parties are *unison* that the claimant was aged about 10 years and as such, learned Tribunal should have protected his right by appointing a Court guardian or should have summoned the required

evidence to substantiate the facts narrated in the claim petition. The only recourse before this Court is to remit the case to learned Tribunal for summoning of the necessary witnesses on behalf of the claimant and also affording due opportunity to the respondents to lead evidence and decide the case afresh.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

There is no second view that adequate opportunities were afforded to the claimant to lead evidence. However, only one witness was produced. Learned Tribunal was kind enough to recall the order of closing of the claimant's evidence and afforded three more opportunities but still the claimant could not produce the evidence. Hence, the claimant evidence was closed. This Court is of the view that course adopted by learned Tribunal for closing of the evidence of the claimant, who was minor, should not have been adopted. If the case was not conducted properly on behalf of the injured, in that eventuality, either the Court guardian should have been appointed or the Court itself should have protected the rights of the minor by summoning the proper evidence. The said course has not been adhered to.

Learned counsel for the parties are also of the view

that the case be remitted to learned Tribunal for recording the evidence of both the sides and then decide the case afresh. This Court is of the considered opinion that the interest of the minor has to be protected by the Court. Therefore, the matter is remitted to learned Tribunal for affording adequate opportunity to the claimant to lead entire evidence and if the guardian of the claimant fails to do so, then to appoint the Court guardian or to suo moto call the witnesses of the claimant to substantiate his version.

In view of the above discussion, the Award dated 28.02.2013 is set aside and the matter is remitted to learned Tribunal.

The parties to the *lis* shall appear before learned Tribunal on 17.08.2015 at 10:00 a.m for further proceedings.

Disposed of accordingly.

July 16, 2015
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(Naresh Kumar Sanghi)
Judge