

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

FAO-5337-2002 (O&M)
Date of decision: 09.05.2016

Shanti

...Appellant

Versus

Usaf and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Dinesh Arora, Advocate
for the appellant.

Mr. Sandeep Suri, Advocate
for respondent No.4.

JITENDRA CHAUHAN, J.

This appeal has been filed by the claimant-appellant against the impugned award dated 12.02.2002, passed by learned Motor Accidents Claims Tribunal, Rohtak, (for short, 'the Tribunal'), whereby the claim petition filed by the appellant was dismissed.

It is contended that the learned Tribunal has grossly and arbitrarily decided issue No.1 against the claimant by recording the finding that no evidence whatsoever was produced by the claimants. Despite a positive statement of PW-I, Asha, wife of the deceased and PW-II, Chandu Ram, father of the deceased, Sanjay that the accident

occurred due to the negligence of the driver of the offending vehicle. Therefore, the award passed by the learned Tribunal is liable to be set aside.

On the other hand, the learned counsel for respondent No.4 has vehemently opposed the prayer made by the appellant.

I have heard the learned counsel for the parties and perused the record.

In the case in hand, the initial burden to prove that the accident took place due to the rash and negligent driving of the offending vehicle i.e. the trailer, by respondent No.1, was on the claimants. In order to prove their case, the claimants were required to lead cogent and convincing evidence before the Tribunal that the accident in question had been occurred due to the rash manner of driving of the said vehicle by respondent No.1. However, they have failed to do so. From the perusal of the record, it reveals that the claimants have not brought on record the copy of FIR and copy of post-mortem of deceased, Sanjay. Even the pillion rider, Pankaj, who is alleged to have lodged the report with the police, was not examined. On examination, the learned Tribunal has rightly drawn adverse inference against the claimants. PW-I, Asha and PW-II, Chandu Ram are not the eye-witnesses of the accident.

In this way, the claimants could not discharge the initial burden of proving their case by leading cogent or convincing evidence. The appellant-claimant thus has no case at all. Therefore, no fault can be found with the findings recorded by the learned Tribunal.

Even otherwise, the appeal is also barred by limitation and there is a delay of 165 days in filing the appeal. The appellant has also filed an application i.e. CM-21629-CII-2002 prayer for condonation of delay of 165 days. It has been averred in the application, that on account of the fact that the appellant was given an impression by her daughter-in-law, who is proforma respondent No.5, that she was made a party by her (respondent No.5) in another appeal, however, from some family sources, the appellant came to know that she had not been made party in that appeal. Due to this, the delay has occasioned.

After hearing the learned counsel for the parties and keeping in view the circumstances explained in the application, this Court finds no ground to condone the delay of 165 days in filing the appeal, since no affidavit of respondent No.5 has been attached with the application to prove the aforesaid assertion. It is clearly an after-thought.

The application is devoid of merits and is hereby dismissed.

No other point has been urged or argued.

Thus, in the light of the above discussion, the instant appeal is hereby dismissed on merits as well as being time barred.

09.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**