

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

FAO-2057-2007 (O&M)
Date of decision: 27.04.2016

Kewal Krishan and another

...Appellants

Versus

Devi Dayal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Mohit Setia, Advocate for
Mr. Gaurav Chopra, Advocate
for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.3.

JITENDRA CHAUHAN, J.

This appeal has been filed by the claimant-appellants against the impugned award dated 11.11.2006, passed by learned Motor Accidents Claims Tribunal, Ludhiana, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the learned Tribunal has erroneously ignored the statement of PW2-Surjit Sharma, who was also travelling on the Tata Sumo (offending vehicle) and has stated that the accident occurred due to the sole negligence of the driver of the offending vehicle. Merely on the fact that the appellant-claimants have not got the FIR lodged, they cannot be denied their claim of compensation.

On the other hand, the learned counsel for respondent No.3 has vehemently opposed the prayer made by the claimants.

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 manner of driving of offending vehicle, by respondent No.1, was on the claimants. The appellants have failed to lead any cogent evidence in this regard. From the perusal of the record, it emerges that neither any occupant of the offending vehicle nor the appellants had taken any steps to file any complaint, DDR or FIR. Even the appellants have taken the contradictory stand with regard to the type of the offending vehicle.

In this way, the claimants could not discharge the initial burden of proving their case by leading cogent evidence and in the absence thereof, the question of rebuttal evidence by the respondents does not arise. The appellant-claimants thus have 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 66 days in filing the appeal. The appellants have also filed an application i.e. CM No.9985-CII of 2007 praying for condonation of delay of 66 days. It has been averred in the application, that on account of the fact that the entire documentary and oral evidence recorded in the case was not available with the counsel for the appellants before learned Tribunal, 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 66 days in filing the appeal since no affidavit of the learned counsel for the appellants before the learned Tribunal has been brought on record to support their assertion.

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.

27.04.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**