

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

**FAO No.1097 of 2011 (O&M).
Date of Decision: 04.05.2016.**

Ramesh Chander and othersAppellants.

VERSUS

Pardeep and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Anita Balyan, Advocate for the appellants.

Mr. Sumeet Sheokand, Advocate for
Mr. R.C. Tacoria, Advocate for respondents No.1 and 2.

Mr. Sandeep Suri, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-2788-CII-2011

There being delay of 56 days in filing the appeal, an application under Section 5 of the Limitation Act for condonation of delay was filed by the appellants.

Considering the averments made in the application, the delay in filing the appeal is condoned and the application is disposed of.

FAO-1097-2011

In the petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by appellants-claimants, they

averred that on 10.02.2008 their son Pardeep alongwith his two friends Parshant and Sachin was going on motorcycle from Delhi towards Bahadurgarh. Suddenly, a bus bearing registration No.HR-63B-2478 (hereinafter referred to as “the offending bus”) being driven rashly, negligently and in a high speed came from the side of Jhajjar and hit a camel who fell on their motorcycle and all the three got seriously injured. Parshant and Sachin were admitted in Delhi Nursing Hospital, Bahadurgarh and Pardeep was admitted in Civil Hospital, Bahadurgarh. Sachin was declared dead and Pardeep was referred to P.G.I.M.S., Rohtak and then to Lok Nayak Jai Parkash Hospital, New Delhi but he succumbed to the injuries on 27.02.2008. Submitting that the deceased was earning Rs.5000/- per month and they were dependent on him, the appellants-claimants claimed compensation to the tune of Rs.10,00,000/-.

The driver, owner and insurer of the offending bus, impleaded as respondents, contested the petition. The respondents denied the allegations of the claimants and pleaded false implication of the bus with a view to extract compensation. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal dismissed the claim petition vide judgment dated 04.05.2010.

Feeling aggrieved, the claimants-appellants preferred the instant appeal.

The submissions made by learned counsel for the parties have

been heard and record perused.

Learned counsel for the appellants argued that the accident took place on 10.02.2008 at around 7:30 p.m. Deceased Pardeep alongwith his two friends was going on a motorcycle towards Bahadurgarh. The offending bus, which was being driven in a rash and negligent manner by respondent No.1-Pardeep, came from the side of Jhajjar and hit a camel going on the road. The camel then fall on the motorcycle on which the deceased was travelling. All the three occupants of the motorcycle fell down and suffered injuries. As the boys travelling on the motorcycle were lying unconscious, one Inam son of Islam, owner of the camel, got a false First Information Report registered with the police wherein he stated that he was walking with 18 camels and the motorcycle on which three persons were travelling came from his backside and hit his camel. Due to the impact, the motorcycle and its occupants fell down and suffered injuries.

Learned counsel asserted that subsequently during investigation it was found that the accident had been caused by the driver of the offending bus who had actually hit the camel due to his rash and negligent driving. It was so mentioned in the final report prepared by the police after investigation under Section 173 of the Code of Criminal Procedure. The driver of the bus was arrested and was challaned. In a claim petition under the Act of 1988, strict proof of an accident caused by a particular vehicle in a particular manner is not possible for the claimants. They have to merely establish their case on the touchstone of preponderance of probability. When after investigation, the police in its final report

specifically mentioned that it was the driver of the bus who had caused the accident, no other evidence was required to be led by the claimants to prove the factum of accident. Learned Tribunal failed to appreciate the evidentiary value of the final report of the investigation agency Ex.P1 tendered in evidence by the appellants. To support his argument, learned counsel relied upon **Bimla Devi & Ors. vs. Himachal Road Transport Corpn. & Ors., 2009(3) R.C.R. (Civil) 805.**

There appears no merit in the arguments of learned counsel for the appellants. The facts in hand are distinguishable from the facts of **Bimla Devi and Ors.'** case (supra). In the case in hand, the First Information Report in respect of the accident was registered on the statement of owner of the camel, who was an eyewitness of the accident. It was registered on the very next day of the accident i.e. 11.02.2008. As mentioned in the final report Ex.P1, the lodger of the First Information Report stated that he alongwith one Khalid Khan and Shabir had started from Narnaul with 18 camels. While he and Khalid Khan were walking at the back of the camels, Shabir was ahead of them. He specifically stated that a motorcycle, on which three boys were travelling, came in a fast speed and negligent manner from their backside and directly rammed into one of his camel. The camel fell down and his leg got fractured. Due to the impact, the motorcycle and its occupants also fell down. The boy, who was driving the motorcycle, disclosed his name as 'Pardeep son of Ramesh' (son of the claimants-appellants).

It is evident from the narration of accident in the First

Information Report that no bus was present at the site when the accident took place. The lodger of the report, being at the back of the camel hit by the motorcyclist, was a natural eyewitness. He had no reason to blame the motorcyclist for causing the accident and remain silent about the bus if at all a bus had hit his camel.

Indeed, in the final report, the police mentioned that during investigation, it was found that the accident had been caused by the driver of the offending bus but nothing was mentioned therein to disclose the source of information during investigation about the presence of the bus at the site of accident. Also nothing was stated to explain how the identification particulars of the bus came to the notice of the investigation officer. What to say of examining an eyewitness of the accident, who could state about the presence of the offending bus at the time of accident, even the investigation officer, who recorded that story in the final report, was not examined. In fact, no eyewitness was examined by the appellants to prove the factum of accident and involvement of the bus in the same. There is nothing to indicate how the entire story with regard to the accident was changed to involve the offending bus. There being no evidence to prove that the offending bus was involved in the accident, learned Tribunal rightly dismissed the petition of the appellants.

The appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

04.05.2016.
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