

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

FAO-1741-2013 (O&M)
Date of decision: 19.05.2016

Badamali

...Appellant

Versus

Rajender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A. K. Gahlawat, Advocate
for the appellant.

Mr. Nibhay Singh, Advocate for
Mr. Munish Gupta, Advocate
for respondent No.1.

Mr. Amrinder Singh Sidhu, Advocate
for respondent No.3.

JITENDRA CHAUHAN, J.

CM Nos.8864-CII and 8865-CII of 2013

Reply on behalf of respondent No.3, to the application for
condonation of delay in re-filing the present appeal, is taken on record.

After hearing the learned counsel for the parties and for the
reasons contained in the applications, which are duly supported by
affidavits, the same are allowed and delay of 134 days in re-filing and
296 days in filing the present appeal is condoned.

Main Case

This appeal has been filed by the claimant-appellant against

the impugned award dated 06.08.2011, passed by learned Motor Accidents Claims Tribunal, Rewari, (for short, 'the Tribunal').

It is contended that the learned Tribunal has erroneously ignored the statement of Mahender Singh, one of the occupant of the offending vehicle i.e. truck bearing registration No.HR-47A-4130; the DDR; report of police under Section 174 Cr.P.C.; and the post-mortem report of the deceased, Surender Singh. In these circumstances, it is clearly established that the deceased died out of use of the offending vehicle.

On the other hand, the learned counsel for respondent Nos.1 and 3 state that the learned Tribunal has rightly decided the issues No.1 to 3 in favour of the respondents.

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

In the present case, three persons namely, Rajender Singh, Mahender Singh and Surender Singh (deceased) were travelling on the offending vehicle. After having meal at Sangam Hotel, one of them namely, Surender Singh slept in the cabin of the roof of the truck and remaining two were inside the truck. When they reached at Shri Nagar, said Mahender Singh and Rajender Singh called the deceased, but no reply was received from him and on checking the roof/cabin, the deceased was found missing. Thereafter, they returned to the said hotel for searching the deceased, which indicates that they were not sure

whether the deceased had boarded the truck when they started their journey from Sangam Hotel. Even during cross-examination, Mahender Singh, had admitted that he was not sure whether the deceased had boarded the truck from the Sangam Hotel or not. In fact, in the claim petition, the claimant has nowhere disclosed that the deceased had died due to use of the offending vehicle. In this way, the claimant has failed to discharge the initial burden of proving that the accident in question took place out of the use of the offending vehicle. Therefore, no fault could be found with the findings recorded by the learned Tribunal.

Dismissed.

19.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**