

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

**FAO No.2406 of 2016 (O&M).
Date of Decision: 28.04.2016.**

Oriental Insurance Company LimitedAppellant.

VERSUS

Rajesh Kumar and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ram Avtar, Advocate for the appellant.

SNEH PRASHAR, J.

CM-8731-CII-2016

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 60 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 60 days in filing the appeal is hereby condoned, subject to all just exceptions.

FAO-2406-2016 (O&M)

Challenge in this appeal is to the award dated 13.10.2015 passed by learned Motor Accident Claims Tribunal, Rohtak (for short, “the Tribunal”) by virtue of which the petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”)

filed by respondents No.1 to 3-claimants was partly allowed and the appellant-insurer of Eicher Tractor bearing registration No.HR-12K-5033 (hereinafter referred to as “the offending tractor”), was held liable for payment of the compensation.

The submissions made by Mr. Ram Avtar, learned counsel for the appellant-insurance company have been heard.

Precisely, the facts are that on 21.02.2014, Tushar (since deceased) by means of motorcycle bearing registration No.HR-12U-6754 (for short, “the motorcycle”) was returning to Rohtak alongwith his friend Lakshay, who was travelling as a pillion rider, after attending a marriage party at village Bhambhewa. Nitin, brother of Tushar, was following them on a scooty. When they were near the water tank on Jhajjar road, a tractor make Eicher being driven rashly and negligently, came from Rohtak side and hit the motorcycle of Tushar. He and his friend Lakshay fell down and suffered serious and grievous injuries. They were taken to PGIMS, Rohtak but Tushar succumbed to the injuries. Nitin noted the registration number of the offending tractor and on his statement a First Information Report No.46 dated 21.02.2014 under Sections 279, 337 and 304-A of the Indian Penal Code was registered at Police Station Shivaji Colony, Rohtak.

The only argument raised by learned counsel for the appellant insurance company is that from the facts it is evident that Nitin, brother of the deceased was not an eyewitness of the accident. Had he been present at the time of accident, he would not have asked some other persons to take his brother and the other injured Lakshay to the hospital and would have

himself gone to his house to bring money. In addition to that, in the site plan prepared by the police investigation officer, the place of accident was on extreme left side of the road for the tractor which apparently was wrong side for the motorcycle. Also as per the mechanical reports of the tractor and of the motorcycle, there was not even a scratch on the front portion of the motorcycle and only its left side was damaged. Had there been a head on collision, the front portion of the motorcycle would have been damaged. Learned counsel contended that it is proved from the said facts that no accident had taken place between the motorcycle and the tractor and that the tractor was subsequently introduced.

There appears no force in the argument of learned counsel for the appellant. For the mere reason that the eyewitness of the accident was brother of the deceased, was no ground to suspect his credibility. If he sent the injured to the hospital with some other persons and himself went home to get money, would not render his testimony doubtful. The First Information Report, in respect of the accident, was registered on the day of accident itself on the statement of Nitin, brother of the deceased. The spontaneity in lodging the First Information Report leaves no scope to doubt that the lodger of the First Information Report was an eyewitness of the accident.

As regards, the site plan of the site of accident prepared by the police investigation officer, it would show only the state facts as was evident from the spot after the accident had taken place, which are not of much consideration. It is the state of vehicles prior to the accident which is

important and which could only be disclosed by a person who had witnessed the accident. No adverse inference can be drawn from the fact that the offending tractor was shown to be stationary on its extreme left side of the road, which was wrong side for the motorcycle. The fact that according to the mechanical report the motorcycle was damaged on right side shows that the tractor had hit the motorcycle on its right side and since the vehicles were coming from opposite direction it can easily be assumed that the fault was on part of the driver of the offending tractor.

Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

28.04.2016.
jitender