

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 370 of 1991
Date of Decision: 01.11.2017**

Balbir Singh

.....Appellant

Versus

Parkash Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rishab Lohan, Advocate for
Mr. R.N.Lohan, Advocate
for the appellant.

Mr. Paul S. Saini, Advocate
for respondent No. 1.

Mr. R.K.Singla, AAG, Haryana.

ANITA CHAUDHRY, J

The present appeal has been filed by the claimant whose claim petition filed under Section 110-A of the Motor Vehicles Act was dismissed on the ground that the claimant had not approached the Court within limitation. It refused to condone the delay.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Copy of the award and grounds of appeal are available. A copy of the claim petition has also been placed on record. Counsel for the parties have stated that the matter can be decided on the basis of the award and other available material.

Counsel for the appellant cites the judgment of the Apex Court reported in '*Dhannalal versus D.P.Vijayvargiya 1996(3) R.C.R. (Civil) 76*

and urges that the matter had been settled by the Apex Court and since there

was a subsequent amendment and the appeal is pending, therefore, the matter will have to be remanded for trial and the Court could not have thrown out on limitation.

The accident had taken place on 31.8.1988. It appears that the claim petition was filed after one year and three months. An amendment was made by the legislature which came into force with effect from 14.11.1994. The effect of the amending Act was that there would be no limitation in filing the claim before the Tribunal in respect of any accident as the Parliament realized the grave injustice and injury which was caused to the heirs and the legal representative whose claims were rejected only on the ground of limitation.

In ***Dhannalal***'s case (supra), the accident had occurred in 1990. The claim petition was filed after a period of one year along with an application for condonation of delay. The Tribunal condoned the delay and the matter was challenged before the Madhya Pradesh High Court and the High Court set aside the order condoning the delay and, therefore, the matter reached the Apex Court. The Apex Court dealt with the issue in para 8 which reads as under:-

*“The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid **Amending Act** shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal,*

High Court or this Court. In such cases, the benefit of amendment of subsection (3) of Section 166 should be extended. ”

The matter had been settled by the Apex Court. Since the claimant had agitated the issue and the appeal is pending. The amendment had been made in 1994 and since clause limiting the time had been deleted, the claimant could pursue his remedies and the appellant was entitled to a hearing on the main issue.

Unfortunately, the file had been lost, therefore, the entire record will have to be reconstructed. The claimant has placed on record copy of the claim petition. The matter is remanded. The parties are directed to appear before the District Judge, Hisar on 27.11.2017. The District Judge may either keep the file on his record or assign it to any other competent Court. Both the parties would place on record the documents which are available with them within a week of its assignment so that the matter can be expedited and disposed of as expeditiously as possible.

The appeal is disposed of accordingly.

(ANITA CHAUDHRY)
JUDGE

November 01, 2017
Gurpreet

Whether speaking/reasoned : **Yes**
Whether reportable : **No**