

Gurbax Singh
2017.06.02 16:55

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

FAO No. 1337 of 2006 (O&M)
Date of decision: 03.05.2017

Smt. Nanhi and others

.....Appellants

Vs.

Shri Bhagwan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. V.D. Sharma, Advocate for the appellants.
Mr. Gurmeet Singh, Advocate for respondent nos. 2,4 &5
Mr. Neeraj Khanna , Advocate for respondent nos. 3 and 6-
Insurance Company

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-claimants against the order dated 10.02.2001 passed by the Motor Accident Claims Tribunal, Jind (in short, "the Tribunal") dismissing their claim petition.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The husband of appellant No.1 Sh. Ajit Singh, deceased was a cleaner on a Truck. On 15.06.1997, the truck stopped in front of one Hotel at Village Kana Kheri, District Ajmer, Rajasthan for him to take meal. Thereafter, the Truck did not start. When

another Truck was pushing the said Truck, it immediately started and came back striking against the head of Ajit Singh. As a result, he suffered injuries and died on the spot. The appellant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, (in short, “the Act”) through Sh. Balraj Sharma, Advocate, claiming a sum of ₹ 10,00,000/- as compensation on account of death of Sh. Ajit Singh on 10.10.1997. Due to untimely death of the husband of appellant No.1 in the young age, she became mentally disturbed for a long time and remained bed ridden. The parents of Sh. Ajit Singh, deceased were old and there was no other member to look after the family. Appellant No.1 is an illiterate lady. She alongwith her relative Sh. Preet Singh contacted Sh. Balraj Sharma, Advocate in the year 2000 to know about the status of the case. Mr. Balraj Sharma informed that it was still pending and gave assurance that she will be informed by post as and when required. Appellant No.1 alongwith Sh. Preet Singh contacted Mr. Balraj Sharma, Advocate from time to time. When Mr. Balraj Sharma did not give any satisfactory reply, appellant No.1 decided to change the counsel and engaged Sh. Bhim Singh Kaushal, Advocate on 2.08.2005. After inspecting the file, Sh. Bhim Singh Kaushal, Advocate came to know that the claim petition had already been dismissed vide order dated 10.02.2001. At the time of inspection of the file, Sh. Bhim Singh Kaushal, Advocate also noticed that the address of the appellants was wrong in the claim petition. The appellants belong to Village Daroli Khera whereas in claim petition, the address is mentioned as Village Barodi Khera. The application for setting aside the judgment dated 10.02.2001 and for restoration of claim petition for fresh decision was filed before the Tribunal on 26.02.2005 which was dismissed as withdrawn on 10.01.2006 as the appellants intended to challenge the judgment by way of appeal before this

Court. In view of the factual position mentioned above, the appellants through the instant appeal pray that the judgment dated 10.02.2001 may be set aside and the matter be remanded back to the Tribunal for a fresh decision after considering the relevant evidence produced by the appellants. However, an application for condonation of delay of 1734 days in filing the appeal under Section 5 of the Limitation Act, 1963 was filed bearing CM No. 5702-C II of 2006 which was allowed on 27.11.2007.

3. I have heard learned counsel for the parties.

4. Admittedly, the appellant No.1 filed claim petition under Section 166 of the Act claiming a sum of ₹ 10,00,000/- as compensation on account of death of her husband of Sh. Ajit Singh who was a cleaner on a Truck. She is an illiterate lady. Due to untimely death of her husband in the young age, she was so shocked and mentally disturbed that she could not contact her counsel to know about the status of the case. She alongwith her relative contacted her counsel many times but she could not get any satisfactory reply. As a result, the relevant evidence for deciding her claim petition could not be produced by her before the Court for one reason or the other on account of the circumstances which were beyond her control. She even changed her counsel who came to know that the claim petition had already been dismissed vide order dated 10.02.2001 for failure to produce any evidence. A perusal of the order dated 10.02.2001 passed by the Tribunal shows that no evidence was produced on behalf of the appellants.

5. Having perused the averments made in the grounds of appeal and the order passed by the Tribunal dated 10.02.2001, I am of the view of that keeping in view the unavoidable circumstances being faced by the appellants, in the interest of justice, an opportunity to adduce relevant

evidence is required to be given. Consequently, the impugned order dated 10.02.2001 is set aside and the matter is remanded to the Tribunal to decide it afresh after examining the evidence that might be produced by the appellants in accordance with law. The Tribunal shall decide the petition expeditiously preferably within six months from the date of receipt of a certified copy of this order. The appeal stands disposed of accordingly.

6. Since the matter is sent back to the Tribunal no separate orders are required to be passed on the miscellaneous applications and the same are disposed of as such.

(Ajay Kumar Mittal)
Judge

May 03, 2017
‘gs’

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No