

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

**FAO No. 3528 of 2011 (O&M)
Date of Decision: July 18, 2017**

Surjit Kaur and others

..Appellant(s)

Versus

Jasbir Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: None for the applicants-appellants.

Mr. Rohiteshwar Singh, Advocate
for respondent no.2.

Mr. Sunil K. Rana, Advocate for
Mr. Amit Jaiswal, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

This is the claimants appeal aggrieved by the dismissal of
their petition filed under Section 163-A of the Motor Vehicle Act.

The appeal has been filed belatedly and there is a delay of
389 days in filing the appeal. Before dealing with the facts disclosed
in the application seeking condonation, the facts mentioned in the
claim petition are necessary. A claim petition was filed under Section
163-A of the Motor Vehicle Act seeking compensation for the death of
Vinod Kumar who was 45 years old. He was stated to be a driver at a

poultry farm in Jalandhar. His income was stated to be Rs.7,000/- per month. The accident occurred on 18.08.2006 at 6:30 PM. An objection was taken by the respondents that the claim petition under Section 163-A of the Motor Vehicle Act was not maintainable as the income was stated to be more than Rs.40,000/- per annum. Plea of collusion was also raised. The accident was denied. It was pleaded that a false FIR had been registered.

The Tribunal rejected the statement of AW-2 Tilak Raj who was the main who was stated to be an eye-witness as he had admitted in the cross-examination that he did not witness the occurrence and had heard about it from other person. The Tribunal noted that Harnam Singh was not examined. It also noticed that the copy of the FIR had not been brought on record and there was a contradiction with respect to the registration number of the vehicle. A finding was also recorded that the claim petition was not maintainable as the income was stated to be Rs.7,000/- per month and it was much higher than Rs.40,000/- per annum.

The case was being adjourned for the last two years only on the requests of the counsel for the appellants. Either there was a request by proxy counsel appearing for the main counsel or there was no appearance on behalf of the appellants. The case was fixed yesterday and a request was again made by the proxy counsel and the case was adjourned for today. No-one has appeared for the appellants.

An application had been filed by the appellants for condoning the delay of 389 days. The only explanation given in the application was that the papers got mixed up with some decided cases kept with the counsel when he had shifted his office and it could be traced only in January 2011.

Arguments on behalf of respondents no.2 & 3 have been heard.

Record has been perused.

The award had been passed on 20.11.2009. The appellants have not explained as to when the brief was handed over to them and when the office was shifted. Vague allegations have been made. The delay has not been sufficiently explained. There is no reason to condone the delay and the application seeking condonation of delay is dismissed. Even otherwise the claim petition under Section 163-A of the Motor Vehicle Act was not maintainable as the income stated was over Rs.7,000/- per month. There was also contradictions with respect to the vehicle. The appeal also fails.

July 18, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No