

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

**1. Date of Decision: 15.12.2017
FAO No.3632 of 2013 (O&M)**

Mukesh and another

...Appellant(s)

Versus

Harnek Singh and others

...Respondent(s)

2. FAO No.1299 of 2014 (O&M)

Satpal and another

...Appellant(s)

Versus

Harnek Singh and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harish Nain, Advocate
for the appellant(s) (in FAO-3632-2013) and
for respondents No.4 & 5 (in FAO-1299-2014).

Mr. S.K. Bhardwaj, Advocate
for the appellant(s) (in FAO-1299-2014) and
for respondents No.4 & 5 (in FAO-3632-2013).

Mr. Naveen Chopra, Advocate
for respondent No.3-Insurance Company.

ANITA CHAUDHRY, J.

CM-4292-CII-2014

The instant application has been filed under Section 5 of
Limitation Act for condonation of delay of 79 days in filing the appeal

i.e. FAO No.1299 of 2014.

In view of the reasons mentioned in the application, delay of 79 days in filing the appeal (**FAO No.1299 of 2014**) is condoned.

Application stands disposed of.

There are two appeals one filed by the parents and the other by the widow, against the dismissal of the claim petition.

FAO Nos.3632 of 2013 & 1299 of 2014

Ram Mehar met with an accident on 27.02.2012. A claim petition was filed by the widow, minor son and the parents who were impleaded as proforma respondents. It was pleaded that Ram Mehar was driving the motorcycle and Satish was on the pillion seat. Ram Mehar had parked his motorcycle on the left side of the road as Satish went to ease himself. A Tata Indica car bearing registration No.UK-08L-2793 driven by respondent No.1 came in a rash and negligent manner and hit Ram Mehar. It was claimed that Satish called his relatives, who shifted Ram Mehar to Shah Hospital Kaithal but his condition was serious and he was referred to PGI, Chandigarh on 28.02.2012 where he succumbed to the injuries. An FIR was also registered on 04.03.2012 at Police Station, Rajound.

Upon notice, respondents No.1 and 2, the owner and driver, failed to appear despite effective service and were proceeded against *ex parte*.

The Insurance Company denied the accident and pleaded that a relative of the claimant had got a false FIR registered after a

delay of 6 days.

The Tribunal in para 17 of the judgment dealt with the statement and rejected them and observed that Satish did not accompany the injured to Shah Hospital, Kaithal and, therefore, his presence on the spot was doubtful. It also noted that supplementary statement was made by Satish where he corrected the registration number of the vehicle. It was observed that the claimants failed to summon the record or examine the doctor from Shah Hospital, Kaithal where the injured was first taken.

The submission on behalf of both the appellants is that it was Ramphal who took the injured to the hospital. As Satish was making other arrangements and the PGI record is also available and it refers to the facts that the accident had taken place on 27.02.2012 at 6.30 p.m. and also records the fact that he was taken to a private hospital in Kaithal and then to PGI, Chandigarh. It was urged that in Ex-P2 the date of admission of Ram Mehar is noted as 02.03.2012 whereas the injured was shifted to PGI, Chandigarh on 28.02.2012 and this fact was disclosed by the witnesses. The counsel contends that there was a mistake with respect to the registration number only in the alphabets and instead of UK inadvertently Satish had made a statement that the vehicle was bearing registration number with alphabet UA but the rest of the digits were correctly given.

The accident in this case had taken place on 27.02.2012. Ram Mehar and Satish were together that evening. It was claimed that Ram Mehar stopped the motorcycle by the side of the road as Satish wanted to ease himself and while he was waiting for Satish, a Tata Indica came and hit him. It would have been normal if Satish have shifted the injured to the Hospital and the records of Shah Hospital, where the injured was shifted, could have been produced but the case set up by the claimant was that Satish was making other arrangements and informing the family and it was Ramphal who took him to the Hospital and he had been examined by the claimants. This story was doubted by the Tribunal and rightly so. The claimants could have summoned the record from Shah Hospital as it would record the history and the name of the person accompanying the injured and that would have been a clincher. The claimants had purposely held back that evidence. The reasons are obvious. That record would not have helped them. It is a clear case where a new person had been introduced. The FIR had been lodged within delay. The intervening time has been used to introduce a vehicle. The registration given in the FIR, which was lodged, belatedly was wrongly given. The presence of Ramphal was doubted and rightly so Satish was the brother-in-law of the injured. There was no reason why he could not lodge the FIR. He did not accompany the injured to the hospital. The version was found to be concocted by the Tribunal. I have no reason to take a different view. The Tribunal had rightly

observed that it was a case of collusion between the driver and the claimants. The reasons given for dismissal detailed in Para-17 of the award, are reasoned.

Both the appeals are dismissed.

December 15, 2017

ps-l

**(ANITA CHAUDHRY)
JUDGE**

Whether Reportable

Yes/No

Whether Reasoned/Speaking

Yes/No