

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

FAO-4096-2013 (O&M)

Date of decision: 20.4.2017

Arsina @ Arsi and others

...Appellants

Versus

Partap Singh Tomar and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Ashish Gupta, Advocate for the appellants

Ms.Vandana Malhotra, Advocate for respondent No.2.

SNEH PRASHAR, J.

CM-16502-CII-2013

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 107 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed and the delay is condoned subject to all just exceptions.

FAO-4096-2013

By way of the instant appeal, the appellants have impugned the award dated 19.12.2012 passed by learned Motor Accident Claims Tribunal, Nuh (for short 'the Tribunal') vide which the petition filed under Section 163-A of the Motor Vehicles Act (for short 'the Act') on account of death of Samim was dismissed.

The submissions made by Mr.Ashish Gupta, Advocate representing the appellants and Ms.Vandana Malhotra, Advocate for respondent No.2 have been heard and record perused.

Learned counsel for the appellants submitted that the appellants produced the required evidence to prove that the death of Samim occurred in an accident arising out of use of a motor vehicle i.e. Tata Safari bearing registration No.MP-07CA 7763. No evidence was led by the respondents to rebut the evidence of the claimants. The judgment passed in the criminal case had no bearing on the claim petition. Learned Tribunal without appreciating the evidence adduced by the appellants dismissed the claim petition. Learned counsel prayed that considering the evidence on record, the present appeal be allowed and the appellants be awarded adequate compensation.

Learned Tribunal while dismissing the claim petition of the appellant vide award dated 19.12.2012, has observed as under:-

“I have perused the judgment Ex.P20 passed by Sh.S.K.Khanduja, the then learned Additional Sessions Judge, Nuh and from the perusal of the same it reveals that the death of deceased Samim was caused due to gun shot injury and not in motor vehicle accident. There is no dispute regarding the law laid down in case law titled Ranju Devi vs. Pawan Kumar Patwari (supra) but this case law is not applicable on the facts and circumstances of the present case.

In the case law titled **Rati Devi (Smt.) and Ors. vs. New India Assurance Co. Ltd. and Anr. II**

(2000) ACC 291 (SC), the Hon'ble Supreme Court has held that :-

“If the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

In the present case the intention of the accused Alim was to kill the deceased because accused Alim alighted from his vehicle and then fired a shot from his pistol upon Samim. His intention was to kill him. It was not a case of accidental murder. Therefore, the death of deceased was not caused due to motor accident rather he was killed by the criminal.”

Section 163A of the Act presupposes compensation to be awarded where the accident arises out of the use of a motor vehicle. But in the present case, there is not an iota of evidence that the death of Samim occurred due to any act or inaction related to a motor vehicle. In fact admittedly, Samim died due to the gun shot injury suffered by him. In his cross-examination, PW1 Mustafa admitted that that Samim died due to the gun shot injury caused by the driver of Tata Safari. The

Tribunal after appreciating every aspect of the matter dismissed the claim petition of the appellant, which warrants no intervention.

Accordingly, the present appeal being devoid of merit is dismissed.

20.4.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No