

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

FAO No.483 of 2016 (O&M)

Date of decision: 28.03.2017

Santosh and others

...Appellants

Versus

Inder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Man Mohan, Advocate,
for the appellants.

ANITA CHAUDHRY, J.

C.M.No.1447-CII of 2016

Prayer in this application is to condone the delay of 637 days in re-filing the appeal.

For reasons stated in the application, the same is allowed and delay of 637 days in re-filing the appeal is condoned.

C.M.No.1448-CII of 2016

Prayer in this application is to condone the delay of 33 days in filing the appeal.

For reasons stated in the application, the same is allowed and delay of 33 days in filing the appeal is condoned.

FAO No.483 of 2016

This claimant's appeal is aggrieved by the dismissal of their claim petition by the Motor Accident Claims Tribunal, Hissar, vide order dated 16.09.2013.

The facts need to be detailed elaborately. Prahlad son of appellants no.1 and 2 was going on a scooter to village Talwandi Rana at

about 4.30/5.00 am. When he was near Hanuman Mandir on Barwala road, Hissar, a tralla bearing registration No.HR-39B-8425 came from opposite side and hit him. The claimants had pleaded that accident was witnessed by Sushil son of Dalbir Singh, who was going to village Litani. It was also claimed that respondent no.1 who stopped the vehicle and came down to see the injured but finding his condition to be critical, fled from the spot along with the vehicle. An FIR was lodged few hours later by Ram Niwas, brother of the deceased. It was claimed that the deceased was a driver with National Chemical Factory, Talwandi Rana, Distt. Hissar. The accident was disputed by the respondents. The Insurance Company took the plea that it was a case of hit and run.

The Tribunal on the basis of the evidence led before it, observed as under:-

“14. The FIR was registered on the basis of statement given to the police by brother of the deceased namely Ram Niwas, who had not witnessed the accident. Neither the name of the driver nor the registration number of the offending vehicle were disclosed in the FIR. PW2 Sushil has been examined by the claimants who had allegedly witnessed the accident, but he stated that he did not stop at the place of accident and went away to village Lithani to meet his sister. Thereafter, he went to Chhatisgarh to meet his brother-in-law Vinod and returned from Chhatisgarh on 26.07.2012. He further stated that till then he did not disclose the registration number of the offending vehicle to any one

*and he disclosed the same to the brother of the deceased on 26.07.12. However, his version in this regard is not believable. He admitted that he belongs to the village of the deceased and as such, they must be knowing each other. It is unbelievable that PW2 would have left the deceased unattended and proceeded to village Litani leaving his co-villager on the road side. Rather, he would have taken him to the hospital and the conduct of this witness is thus highly improbable which is not expected from any prudent man. It is also highly unbelievable that he would not have disclosed the registration number of the offending vehicle to the family members of the deceased or to the police for more than two months. His testimony that he had gone to Chhatisgarh is thus also not believable and this story seems to have been concocted just to cover up the delay in disclosing the registration number of the vehicle. Rather, the claimants have taken this much time just to get the vehicle falsely implicated in collusion with respondents no.1 and 2. In such circumstances, testimony of PW2 thus cannot be relied upon. In **Bimla's case (supra)** relied upon by learned counsel for respondents, the witness had allegedly noted down the registration of the offending vehicle but he disclosed the registration number after three months and it was held that it is unbelievable that the witness would retain a slip*

*by mentioning registration number on it in respect of an accident in which none of his near relation was involved. In **Gahhan Singh's case (supra)**, it has been held that merely because driver and owner had remained exparte cannot bring an inference that the contentions raised by the claimants were established. It has been further held that a person who has witnessed the accident could not have left the place at night for his village leaving the dead body behind and not accompanying the same to the hospital. In **Murti Devi's case (supra)** witnesses did not accompany the injured to the hospital. He also did not make any effort to confect any one and it was held that he had not witnessed the accident and was disbelieved. It has been held by Hon'ble High Court in **Ram Karan's case (supra)** that rash and negligent driving of the driver cannot be presumed merely because he had been challaned by the police or that he has been acquitted or convicted. This fact has to be decided by the Tribunal from the evidence led before it. Merely because respondent no.1 has been challaned by the police is of no consequence, as there is no cogent evidence on the file as to on what basis respondent no.1 was arrested and offending vehicle was found to be involved in the accident. These facts have to be established before the Tribunal by leading cogent and convincing evidence, but the petitioners have miserable*

failed to lead cogent and convincing evidence to prove the involvement of the offending vehicle, which appears to have been introduced subsequently. The case law relied upon by learned counsel for petitioners is not applicable to the facts and circumstances of the case in hand.”

As the claimants failed to prove issue no.1, the claim petition was dismissed.

Counsel for the appellants has urged that the FIR was lodged by the brother who was not on the spot and he had received the information and therefore, the details of the vehicle did not find a place in the FIR but the incident was witnessed by Sushil, who was present at the time of the accident but he had to leave for his sister's place and had gone to Chhatisgarh and he returned after 2½ months and came to know about the accident and he had noted the details of the vehicle, which had caused the accident and he provided them to Ram Niwas and also to the police and the driver of the tralla was challaned. It was urged that the driver of the vehicle did not step into the witness box and adverse inference should have been drawn. It was urged that considering the observation made in often quoted case i.e. Girdhari Lal's case, the mere fact that the driver was facing trial was sufficient to prove the fact that the driver's involvement was proved.

The FIR in this case was lodged against unknown driver and unknown vehicle. The FIR was lodged about two hours after the accident, by the brother. It mentions the fact that some truck had hit his brother. The FIR was lodged on the information received by the brother. The details of the person who had provided this information were not made available by

the claimants. Three month's later Sushil, a resident of the same village is said to have provided the details to the police. He had stated that he had noted down the number on a piece of paper. It was claimed that since the face of the person who suffered the accident was disfigured. He did not know as to who was injured and continued with his journey but when he returned in July, he came to know that injured had died and was of his village, therefore, he gave the details to the police.

The driver of the tralla had been arrested on 09.08.2012. The information/details are said to have been provided by Sushil. There is no reason why Sushil left the house so early that morning. Normally no one would leave his house so early unless there was some urgency. It is strange that Sushil who has witnessed the incident did not even make any effort to take the injured to the hospital. It only shows that he was a procured witness and vehicle of a person known to the claimants was introduced.

I find no infirmity in the findings recorded by the Tribunal. There is no evidence to connect the vehicle or the driver. The appeal is dismissed.

March 28, 2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned
Whether reportable

:Yes/No
: Yes/No