

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4868 of 2017 (O&M)
Date of Decision: 17.07.2017

National Insurance Company Ltd.

... Appellant

Versus

Jagiri Ram (now died) and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aman Dhir, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

1. The explanation in the application under Section 5 of the Limitation Act for condoning the delay of 43 days in filing the appeal is stock reason. The delay was caused by inter-departmental communication regarding permission to file the appeal which is the type of reason which has not been accepted by the Supreme Court in Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr., 2012(3) SCC 563 for condoning delay in appeals by State and its instrumentalities and, therefore, in absence of valid explanation the delay, though appears for over a month, is not open to acceptance mechanically, since the appeal is by the National Insurance Company which has at its command all the wherewithal and battery of counsel to advise and act promptly and keep check on dates of expiry of limitations.

2. That apart, I have heard learned counsel briefly on the merits as well and find that in none of the contentions a case for interference is made

out. If the Insurance Company disputes the age of the deceased was 21 years on the date of fatal accident then the Tribunal has relied on the statement of the victim's sister Ramandeep PW-2 made on oath deposing that her brother was 21 years of age at the time of death as a result of the injuries suffered in the accident. This oral testimony is acceptable evidence and I have no reason to cause a change only on the argument that the multiplier would depend on age and may reduce the compensation. The argument is without any substance and is noticed to reject.

3. The second argument is that another person was also injured in the same accident while walking beside the deceased but was not produced as an eye witness. It is said that the other person suffered injured. Merely because such injured person was not produced as a witness makes little difference to the case.

4. Learned counsel explains on facts that the deceased and the injured survivor were crossing the road when they hit by a speeding Tempo Traveller. If they were talking together then they knew each other. If they knew each other then effort should have been made by the claimants to produce the co-injured to face cross examination. It is not for this Court to go into hypothetical facts, the 'ifs' and 'buts' of the scene when there is at hand reliable evidence available on which the claim could rest and, therefore, I would not put much paid on the contention and would turn it down.

5. It is further argued that in FIR No.62 dated May 27, 2010 registered in Police Station Goraya, Punjab under Sections 279, 304-A and 337 of IPC the driver of the offending Tempo Traveller has been acquitted

and therefore negligence and rash driving is not proved and this should go in favour of the Company.

6. I fail to see how this would impact the claim before the Tribunal. The standards of proof are different in the Criminal Court and in the Tribunal. On law, I find that the ruling in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 2 SCC (Civil) 770 has been scrupulously applied by the Motor Accident Claims Tribunal, Jalandhar in its award dated February 17, 2017 and no infirmity or error is found therein and in the calculation table set out in the award granting sums of money under different heads of claim.

7. For the above reasons, the appeal is without life and is dismissed, both on merits and on delay in presenting the appeal.

(RAJIV NARAIN RAINA)
JUDGE

17.07.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*