

In the High Court of Punjab and Haryana at Chandigarh

FAO-4631 of 2011(O&M)

Date of Decision:20.2.2018

Smt. Parmeshwari and another

---Appellants

vs.

Vinod Chopra and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ajit Sihag, Advocate
for Mr. Johan Kumar, Advocate for the appellants

Mr. D.R.Bansal, Advocate for respondent No. 1

Rekha Mittal, J.

C.M.No. 17512-CII of 2011

Prayer in this application is for condoning delay of 369 days in filing the appeal.

In view of averments made in the application coupled with the factum that provisions of the Motor Vehicles Act for grant of compensation are meant to enhance social justice and save the victim family from the financial loss caused due to accident, the application is allowed, delay of 369 days in filing the appeal stands condoned subject however, to the condition that in case the compensation is allowed, the applicants-appellants shall not be entitled to interest for the period of delay.

Disposed of accordingly.

FAO-4631 of 2011(O&M)

The present appeal directs challenge against award dated

2.3.2010 passed by the Motor Accidents Claims Tribunal, Faridabad (in short “the Tribunal”) whereby application for grant of compensation in regard to death of Ram Chander in a motor vehicular accident that took place on the intervening night of 27/28-7-1995, has been dismissed.

The facts relevant for disposal of the present appeal are that as per case set up by the appellants/claimants, on the fateful night, deceased Ram Chander alongwith Ishwar Singh and Satish Kumar was travelling in Maruti van bearing No. DE-20/B-7017 from village Ghutmal to Shakurpur Delhi. When they reached near village Jhatipur within the jurisdiction of police station, Samalkha, at about 2-00 a.m., it was raining heavily. Truck bearing No. HR-29/C 2672 was standing on *kacha* portion of the road. It was started all of a sudden by respondent No. 2, its driver which hit the Maruti van coming from the opposite direction causing injuries to Ram Chander, Ishwar Singh and Satish Kumar occupants of Maruti van. Ram Chander succumbed to injuries sustained in the occurrence on 28.7.1995 in Safdarjung Hospital, New Delhi.

Initially, an ex parte award was passed in favour of the claimants on 19.4.2003. Later, the said award was set aside with an opportunity to the respondents to contest the proceedings. On the basis of pleadings of the parties, the Tribunal framed the following issues:-

1. Whether Ram Chander had died in an accident caused due to rash and negligent driving of respondent No.2, as alleged?OPP
2. To what amount of compensation, if any and from whom the claimants are entitled? OPP

3. Whether the petition is not maintainable in the present form?

OPR

4. Whether the petitioners have no cause of action to file the present petition? OPR

5. Whether the petition is bad for non joinder of parties? OPR

6. Relief

Parties were permitted to adduce evidence in support of their respective contentions. The claimants examined Ishwar Singh PW1, to discharge onus of issue No. 1.

After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No. 1 against the claimants and resultantly their plea for grant of compensation was rejected.

Counsel for the appellants, in line, with the averments raised in the petition with regard to accident being the result of rash and negligent driving of alleged offending vehicle has submitted that the Tribunal grossly erred by determining issue No. 1 against the appellants and rejecting their claim for compensation. It is further argued that testimony of Ishwar Singh, one of the occupants of Maruti van, driven by Ram Chander is sufficient to establish plea of the claimants that driver of the offending vehicle is author of the accident in question.

Counsel representing respondent No. 1, on the other hand, has supported findings of the Tribunal on issue No. 1 with the submission that the claimants failed to adduce satisfactory much less cogent and convincing evidence to discharge onus of issue No. 1, therefore, findings recorded by the Tribunal on the said issue cannot be faulted with.

I have heard counsel for the parties, perused the paper book and the records.

To decide the controversy raised in the present appeal, this Court needs to examine testimony of Ishwar Singh PW1 and that of Jagtar Singh RW1, driver of the alleged offending vehicle. Ishwar Singh in his examination in chief has deposed to the following effect:-

“The driver was driving the truck on wrong side and the accident was caused due to his negligence.

In his cross examination, he has stated that the road was single and the offending truck was standing on the *kacha* portion of the road. In the later portion, he has deposed that he did not know as to how the truck suddenly came in front of maruti van.

Jagtar Singh RW1 has denied the accident having been caused with his truck on the particular date. In his cross examination, he has denied the suggestion that he had parked his truck on the metalled road in the middle without using navigation lights. There is not even an iota of evidence led by the claimants that driver of the offending vehicle suddenly started the truck which was lying parked on *kacha* portion of the road and struck against Maruti van.

The only witness examined by the claimants to prove the accident being the result of rash and negligent driving of Jagtar Singh has only stated that driver was driving the truck on wrong side but does not explain as to on which side the truck was being driven and how it was on wrong side in order to establish rashness or negligence of the driver. Conversely, statement of Ishwar Singh in this regard gets falsified and

belied from the suggestion put to Jagtar Singh that he had parked his truck in the middle of the road without navigation lights.

Perusal of testimony of Jagtar Singh would reveal that no such fact has been put to the witness that the truck was moving at the time of accident or he started the truck all of a sudden, brought it on wrong side and hit against the Maruti van. Under the circumstances, the Tribunal has rightly concluded that the claimants have failed to establish their plea that accident took place due to rash and negligent driving of truck by Jagtar Singh. It appears to the Court that as the occurrence took place at 2-00 a.m. after mid night and it was raining heavily, driver of Maruti van swerved from the metalled road and hit against the truck which was lying parked on *kacha* berm resulting in the occurrence. In this view of the matter, no error much less illegality can be found in findings of the Tribunal by answering issue No. 1 against the claimants and in favour of the respondents.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

20.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No