

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

-.-

FAO 5632 of 2011 (O&M)
Date of decision: 18.04.2018

Nirmala Devi

..... Appellant

Versus

Ramesh Kumar and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. J S Khiva, Advocate
for the appellant

Mr. Ashwani Talwar, Advocate
for respondent No. 3

Mr. Vinod Gupta, Advocate
for respondent No. 4

-.-

Rekha Mittal, J. (Oral)

CM 20849 CII of 2011

Prayer in this application is for condonation of delay of 351 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, the application is allowed and delay of 351 days in filing the appeal stands condoned.

Main case

The present appeal directs challenge against award dated 03.12.2009 passed by the Motor Accidents Claims Tribunal, Mansa (hereinafter to be referred as 'the Tribunal') whereby application for compensation filed under Section 166 of the Motor Vehicles Act, 1988 (in short, 'the Act') on account of damage/loss caused to TATA ACE Tempo No. PB 31F/4443 in a motor vehicular accident that took place on

04.09.2008 due to rash and negligent driving of Truck No. RJ-10GA/1556 by Ramesh Kumar, its driver has been dismissed primarily on the ground that the present is a case of contributory negligence of driver of TATA ACE aforesaid as well as driver of Truck in question.

Heard.

Even if negligence to an extent is attributable to driver of the damaged vehicle, at best, owner of the vehicle shall not be entitled to compensation to the extent negligence is attributable to his/her driver but that cannot constitute a ground to dismiss the claim petition altogether.

Counsel for the parties are *ad idem* that the award passed by the Tribunal may be set aside and the matter be remitted to the Tribunal for adjudication as to extent of negligence that can be attributed to driver of the damaged vehicle and thereafter to decide entitlement of the claimant to get compensation from the driver, owner and insurer of the other vehicle involved in the accident.

In view of the above, the impugned award is set aside. The matter is remitted to the Tribunal for deciding extent of negligence attributable to each of the vehicles involved in the occurrence and compensation to be paid qua damage to the vehicle in question. The parties through their counsel are directed to appear before the Tribunal on 18.05.2018. The Tribunal is directed to dispose of the case within three months of the parties putting in appearance.

(Rekha Mittal)
Judge

18.04.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No