

208

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

**FAO No.3140 of 2013 (O&M)
Date of Decision: 13.11.2018**

Santosh and others

Appellants

Versus

Narinder Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Namit Sharma, Advocate
for the appellants.

Mr. Aseem Aggarwal, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 26.03.2012 passed by the Motor Accident Claims Tribunal, Karnal (for brevity 'the Tribunal'). The appeal is accompanied by an application for condonation of delay of 316 days.

The appellants in the appeal are widow, three minor children and mother of Om Parkash (deceased). The driver of Maruti Car bearing registration No. AP28-AM-0574 (hereinafter referred to as 'offending vehicle'), owner of offending vehicle and insurer of offending vehicle i.e. National Insurance Company Limited have been arrayed as respondents No.1 to 3 respectively in the appeal.

A motor vehicular accident took place on 10.01.2011. Om

Parkash was riding his motorcycle bearing registration No. HR-05V-1434. On his way, a rashly and negligently driven offending vehicle hit his motorcycle. As a result of the accident, he suffered grievous injuries and died at the spot. FIR No.27, dated 11.01.2011 was registered at Police Station City Karnal. The legal heirs of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The Tribunal after considering the facts and appreciating the evidence adduced, assessed the monthly earning of the deceased as ₹4,214/-. 1/4th deduction for self expenses was made and multiplier of 14 was applied. The Tribunal awarded compensation of ₹5,46,048/- alongwith interest @ 7.5% per annum. The amount awarded included ₹5,000/- for last rites and ₹10,000/- for loss of consortium.

The present appeal has been filed for enhancement of compensation. Notice of motion was issued in application for condonation of delay as well as in the main appeal qua respondent No.3-Insurance Company only. Respondent No.3 filed reply to the application for condonation of delay and the same was taken on record.

On the outset, learned counsel for respondent No.3 contended that present appeal is not maintainable as the appellants had already challenged the impugned award by filing FAO No.2279 of 2012. He argued that the said appeal was dismissed as withdrawn on 16.01.2013 and the present appeal is the second appeal by the same appellants against the same award.

Learned counsel for the appellants argued that the Act is a welfare legislation, hence, there is no bar to file the second appeal. He relies upon the decision of Full Bench of this Court in **Jai Singh and another Vs. Col. N.A. Subramaniam and another 1982 PLR 457.**

The contention raised by learned counsel for the appellants lacks merit.

It is not disputed that the appellants in the present appeal had filed FAO No.2279 of 2012 challenging the award dated 26.03.2012 passed by the Tribunal and the same was dismissed as withdrawn on 16.01.2013. The order is reproduced below:-

“Learned counsel for the appellants prays for withdrawing the appeal.

Dismissed as withdrawn.”

No second appeal can be filed by the appellants challenging the award. Reliance of the learned counsel for the appellants on decision of Full Bench in **Jai Singh's** case (supra) does not enhance the case of the appellants. The relevant portion of the quoted judgment is reproduced below:

“21. Thus, it is quite evident that the provisions of [Section 110-C](#) and R. 20 do not either expressly or by necessary implication exclude the applicability of those provisions of the Code to which there is no specific mention, to the proceedings before the Tribunal.”

22. Once having overcome the difficulty which, according to the learned counsel for the appellants, was created by [Section 110-C](#) and Rule 20, there can be no

gainsaying that vast power exists in the Tribunal to determine its own procedure in dealing with a claim application. The Tribunal has all the trappings of a Court and the proceedings before it closely, resemble to the proceedings in a Civil Court. Moreover, it is quite evident that the Legislature purposely did not make all the provisions of the Code of Civil Procedure applicable to the proceedings before the Tribunal, which are of a summary nature, as the whole intent of the Legislature was to ensure a speedy disposal of the claims applications filed by the injured persons or the legal representatives of the deceased. Under [Section 110-C](#), the Tribunal is empowered to evolve its own procedure and for the purpose of dealing with a claim application it can resort to any provision of the Code of Civil Procedure on the principle of justice, equity and good conscience. In order to do real and substantial justice an order of the Tribunal, which does not contravene the positive provisions of the law and is orderly and consistent with the rule of natural justice, would certainly be legal. In this view of the matter, I hold that the Claims Tribunal has power to allow amendment of the claims application at any time whether such an application is made within the period of limitation or after the expiry of period of limitation.

23. *After having arrived at the aforesaid conclusion, it has now to be seen as to what principles should be kept in mind by the Tribunal while dealing with the application for amendment. In my view this matter should not detain us much nor is it necessary to dilate upon it in depth as it would suffice to observe that while dealing with the question of amendment on an application made within the period of limitation, i.e., within the period prescribed for filing a claim*

application, the Tribunal should ordinarily show the amendment which is necessary for the purpose of deciding the claim application of the injured or the legal representative of the deceased. But where an application is made after the expiry of the period of limitation, then the Tribunal must require the party asking for amendment to show sufficient cause and in the event of being satisfied that sufficient cause exists, the Tribunal would be well within its jurisdiction to allow the amendment after the period of limitation.”

The controversy involved in the present appeal was not the issue before the Full Bench. Merely because the Act is a welfare legislation, it will not entitle the appellants to file separate appeals challenging the same award on various grounds. Each ground of challenge will not provide a separate cause of action for challenging the award.

The appeal is, accordingly, dismissed.

As the appeal has been held to be not maintainable being the second appeal filed against the same award, the issue of limitation is kept open.

[AVNEESH JHINGAN]
JUDGE

November 13, 2018

pankaj baweja

- | | | |
|-------------------------------|---|---------|
| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |