

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

**FAO No. 5082 of 2015 (O&M)
Date of Decision: December 19, 2018**

Sushil Kumari and others

.....APPELLANTS

VERSUS

Shyam Sunder and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajat Garg, Advocate for
Mr. Aditya Jain, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No. 3.

SURINDER GUPTA, J.(Oral)

CM-15739-CII-2015

Heard on the application for condonation of delay. There is delay of 278 days in filing the appeal.

As per the applicants, deceased-Jagdish was sole bread earner of the family. Appellant No. 1-Sushil Kumari (wife of deceased) was collecting relevant documents required for production in the case. When she approached her counsel, she came to know that her evidence had been closed, resulting in dismissal of her claim petition. She was not intimated immediately by her counsel after dismissal of the claim petition which resulted in delay of 278 days in filing the appeal.

Keeping in view the above facts, supported by affidavit, delay of 278 days in filing the appeal, is hereby, condoned.

FAO-5082-2015

Heard.

The claim petition filed by the appellants on 10.05.2013 under Section 166 of Motor Vehicles Act, 1988, was dismissed on 06.03.2014 under Order 17 Rule 3 CPC by Motor Accident Claims Tribunal, Gurgaon (now Gurugram) after closing the evidence of the claimants. It was observed that claimants had been afforded six opportunities to produce evidence but they failed to examine any witness.

Learned counsel for appellants submits that claimant-appellant No. 1 is wife of deceased-Jagdish and appellant No.-2 i.e. her daughter was studying in Nepal. Appellant No.1 being an illiterate lady could not arrange the required documents and witnesses resulting in closer of evidence by order.

Keeping in view the fact that it is a social legislation enacted to help the victim's family, whose relative/bread earner had died or suffered injuries in the accident. Though, the claimants were allowed a number of opportunities to produce evidence, still I am of the opinion that instead of dismissing the claim petition under Order 17 Rule 3 CPC, the claimants should be allowed opportunity to produce evidence before the Tribunal to get their petition decided on merits.

In view of the above, this appeal is allowed. Order dated 06.03.2014 is set aside. The Tribunal is directed to take the claim petition bearing MACT No. 43 of 10.05.2013 on board, allow two effective opportunities to the claimants to lead entire evidence and then decided the same on merits in accordance with law.

The claim petition was dismissed on 06.03.2014. In the event of the compensation being allowed, the claimants will not be entitled to any interest on that amount for the period from 06.03.2014 till 19.12.2018.

The parties are directed to appear before the Tribunal on 17.01.2019.

(SURINDER GUPTA)
JUDGE

December 19, 2018
Jyoti-II

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>