

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

FAO No.4203 of 2016(O&M) &

XOBJC-290-CII of 2016

Date of decision: 7.3.2018

Rakesh Kumar

.....Appellant

VERSUS

Rajesh @ Raja and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Hooda, Advocate for the appellant.

Mr. S.S. Shekhawat, Advocate for respondent No.1/cross objector.

REKHA MITTAL, J. (Oral)

CM No.14462-CII of 2016

Prayer in this application is for condonation of delay of 198 days in filing the appeal.

Heard.

In view of the averments made in the application supported by an affidavit of Rakesh Kumar- appellant, the application is allowed and delay of 198 days in filing the appeal stands condoned, subject to condition that in case, the appellant succeeds in appeal, he will forgo interest for the period of delay.

Disposed of accordingly.

FAO No.4203 of 2016 &
XOBJC-290-CII of 2016

This order will dispose of FAO No.4203 of 2016 filed by driver of truck No.HR-14D-5634 and cross objections No.290-CII of 2016 preferred by the injured claimant. For the sake of convenience, parties would be referred as ‘the appellant’ and ‘claimant’ respectively.

Counsel for the appellant would argue that as the application for compensation was filed under Section 163-A of the Motor Vehicles Act, 1988 (in short ‘the Act’), driver was not required to be impleaded as a party nor can he be held liable to pay compensation. In support of his contention, he has referred to the provisions of Section 163A of the Motor Vehicles Act, 1988.

Counsel representing the claimant/cross objector has supported the award holding the driver and owner of the vehicle in question jointly and severally liable to pay compensation. He has further submitted that compensation awarded by the Tribunal is liable to be enhanced.

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract Section 163A (1) of the Act, reads as follows:-

“163A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised

insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.”

Perusal of the aforesaid extract leaves no manner of doubt that Section 163A of the Act makes a special provision as to payment of compensation on structured formula basis. Owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. As in the case of application under Section 163A, claimant is not obligated to prove the factum of rashness or negligence on the part of driver of the vehicle involved in the occurrence, driver of the vehicle is neither required to be impleaded as a party nor can be fastened with liability to pay compensation. In this view of the matter, I find merit in contention of the appellant that the Tribunal has seriously erred by holding the appellant jointly and severally liable to pay compensation. Accordingly, findings of the Tribunal holding the appellant liable to pay compensation cannot be allowed to sustain and ordered to be set aside to that extent.

As the appeal filed by driver of the vehicle in question has been allowed and his liability to pay compensation has been set aside, claimant cannot assert his right for enhancement of compensation on the basis of cross objections. As a consequence, cross objections filed by the claimant are disposed of but without prejudice to his right to avail appropriate remedy in law seeking enhancement of compensation.

For the foregoing reasons, the appeal filed by the appellant is allowed. The award passed by the Tribunal holding the appellant liable to

pay compensation is set aside. No order as to costs. The statutory amount of Rs.25,000/- be remitted to the Tribunal for payment to the claimant.

MARCH 7, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no