IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5944 of 2015 (O&M)
Date of Decision.09.01.2018

Mandeep Kaur and another ....Appellants

Vs

Bhupindera Singh and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate
for the appellants.

Mr. Bhrigu Dutt Sharma, Advocate
for respondent No.2.

Mr. Harjinder Singh, Advocate
for respondent No.3-insurance company.

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AMIT RAWAL J.(ORAL)

C.M. No.18723-CII of 2015

Mr. Sandhir, learned counsel appearing on behalf of the appellants submits that a delay of 817 days has occurred in filing the appeal on the ground that the claimants did not have any source of income after the death of the sole bread earner. The particulars of the insurance company with whom the truck bearing registration No.PB-08BC-9851 involved in the accident was insured were not known at the time of filing of the claim petition, though the owner and driver of the aforementioned truck were impleaded. The driver appeared and contested the claim petition but the owner did not, therefore, the claimants could not ascertain the particulars of the insurance company. It is in this backdrop of the matter, the delay had occurred.

The aforementioned application for condonation of delay had been contested by the insurance company through Mr. Harjinder Singh that the delay of each and every day is not explained.

Delay in filing the appeal cannot be fatal to the adjudication of the *lis*, particularly when it is a case where the sole bread earner of the family has died and the Motor Vehicles Act is a beneficial legislation, therefore, stringent approach for condoning the delay should not come in the way of the claimants. The aforementioned view of mine is derived from the ratio decidendi culled by Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649.***

Keeping in view the aforementioned, the delay of 817 days in filing the appeal is condoned.

Application is allowed.

FAO No.5944 of 2015 (O&M)

The present appeal has been preferred by the legal representatives of deceased-Kulwant Singh, who unfortunately died in a motor vehicular accident occurred at 7.30 PM on 29.09.2009. He was aged 50 years at the time of accident and stated to be earning ₹15,000/- per month.

Mr. V.K. Sandhir, learned counsel appearing on behalf of the appellants submitted that the claimant had impleaded the owner and driver of the offending truck bearing registration No.PB-08BC-9851 and the particulars of the insurance company were to be disclosed by the owner but the owner was proceeded ex parte and the appellants-claimants could not ascertain the particulars of the insurance company as the driver did not disclose the same. The Tribunal fastened the liability on the owner but the knowledge of the truck having been insured with respondent No.3 was acquired during the pendency of the execution proceedings. It is in this backdrop of the matter, the misc. application bearing No.18724-CII of 2015 under Order 1 Rule 10 CPC has been moved.

Mr. Harjinder Singh, learned counsel representing the insurance company submits that in case the aforementioned application is allowed, the insurance company may be given a chance to contest the claim petition in order to ascertain the truth, much less, the factum of validity and genuity of the driving licence and on other grounds, in essence, the insurance company should be granted a chance to take all the defences available under Section 149(2) of the Motor Vehicles Act.

This aspect has not been disputed by Mr. Bhrigu Dutt Sharma representing the respondent No.2-owner.

However, Mr. Harjinder Singh submitted that the claimants preferred another claim petition but the same was dismissed as withdrawn.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sandhir as there is an assertion in the application that name of the insurance company was not referred to, for, it was to be disclosed by the owner. The factum of owner having been proceeded ex parte is not controverted by Mr. Bhrigu Dutt Sharma. In this situation, the liability of payment of compensation has been fastened on the owner. It is an essential requirement under the Motor Vehicles Act to get the vehicle insured and this fact surfaced only during the pendency of the execution application.

I am of the view that it is a fit case where the matter should be remitted to the Tribunal to decide the controversy afresh by giving opportunity to the National Insurance Company i.e. the insurer of the offending truck represented by Mr. Harjinder Singh to contest the claim on all the grounds available under Section 149(2) of the Motor Vehicles Act including the interest part.

Resultantly, the award passed by the Tribunal is set aside and the matter is remitted back to the Motor Accident Claims Tribunal (Adhoc), Fast Track Court, Amritsar to decide the matter afresh.

The parties are directed to appear before the MACT, Amritsar through their counsel on 02.02.2018.

The insurance company is directed to file the written statement within a period of 30 days from the date of its appearance before the Tribunal. This Court is sanguine of the fact that the Tribunal shall decide the claim petition as expeditiously as possible and preferably within a period of one year.

The appeal stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

January 09, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No