

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

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**FAO No.8092 of 2014 (O&M)
Date of decision: 21.02.2018**

Taras Pal

..Appellant

Versus

Chander Bhan Singh and Others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Bikram Chaudhary, Advocate
for the appellant.

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

HARI PAL VERMA, J.(ORAL)

The appellant-claimant has filed the present appeal, impugning the award dated 13.11.2013 passed by the learned Motor Accident Claims Tribunal, Palwal (for short “the MACT”) whereby the appeal filed by the appellant/claimant under Section 166/140 of the Motor Vehicle Act was dismissed on the grounds that despite having ample opportunities to produce evidence in support of the present petition, claimant/appellant failed to produce the evidence. The evidence of claimant was closed on 30.07.2013. Though the claimants had moved an application for recalling the said order, but the same was also dismissed by the learned trial Court on 12.11.2013. Thus the appellant has filed the present appeal impugning the award dated 10.11.2013, order dated 30.07.2013 and 12.11.2013.

Learned counsel for the appellant states that the appellant had done his best and handed over all the papers to his counsel, but the counsel had failed to produce his evidence, though ample opportunities were given which includes the last opportunity. He did not even deposit the previous costs of ₹ 200/- as imposed by the learned MACT.

On the other hand, counsel for the respondent-Insurance Company has argued that a perusal of the record shows that through out the pendency of the claim petition before the Tribunal, the claimant availed as many as 9 opportunities to lead his evidence, but failed to adduce evidence. There is a lapse on the part of claimant and therefore, he is not entitled for any sympathy. Appellant cannot be granted any further opportunity to lead evidence.

I have heard counsel for the parties and perused the record.

Considering the fact that the claim petition has been filed by the appellants on account of death of their daughter Suman, who died in a Motor Vehicular Accident which took place on 14.06.2009, this Court finds that Motor Vehicles Act (for short "the Act") is a beneficial legislation and another opportunity deserves to be given to the appellant to lead their evidence. The case was fixed for claimants evidence for 10.04.2012, 19.07.2012, 10.09.2012, 29.09.2012 and 29.11.2012 being last opportunity. Thereafter, the case was posted for 14.02.2013, but even on that date only one PW was examined by the claimant and he failed to adduce the remaining evidence. Thereafter, the case was listed for 18.04.2013, 28.05.2013 and on 09.07.2013 again it was last opportunity and cost of ₹ 200/- was also imposed for not concluding the evidence. Finally on

30.07.2013, when none of the witnesses were present, the Court closed the evidence of the appellant-claimant. No doubt numerous opportunities were granted to the appellant, but this is the case of unfortunate parents who have lost their daughter in an accident. This Court is of the view that the claimant be afforded two effective opportunities to lead and complete their evidence. An undertaking shall be given by the counsel for the claimant that he will not seek any further opportunity and shall conclude their evidence in two effective opportunities and in case they fail to complete their evidence within the aforesaid limited time, their evidence would be deemed to be closed.

On the basis of the aforesaid discussion, the present appeal is accordingly remanded back to the Tribunal. The impugned award dated 13.11.2003 as well as order dated 30.07.2013 and 12.11.2013 are set aside. The Tribunal shall afford two opportunities to the claimants and similarly the respondents-Insurance Company be also given opportunity to rebut the evidence, if necessary.

The Tribunal shall ensure to decide the present claim petition preferably within 6 months from the date of receipt of certified copy of this Order. However, it is made clear that as the counsel for the appellant has given an undertaking that since there is clear lapse on the part of his clients, he shall not claim interest on the amount of compensation if awarded by the Tribunal from the date of filing of the claim petition till today. On furnishing such affidavit, the Tribunal shall proceed with the matter.

The present case is remanded back to Tribunal subject to ₹ 1,000/- as costs.

Parties are directed to appear before the Tribunal on
27.03.2018.

(HARI PAL VERMA)
JUDGE

February 21, 2018
Poonam (II)

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