

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-895-2018 (O&M)
Date of Decision: 13.07.2018

Bir Singh (deceased) through L.Rs

--Appellant(s)

Versus

Kirna Devi & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Mrigank Sharma, Advocate for the appellant(s).

TEJINDER SINGH DHINDSA.J

CM-2961-CII-2018

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of a delay of 529 days in filing the accompanying appeal.

In the considered view of this Court, the grounds cited in the application, do not constitute a sufficient ground to condone the inordinate delay of 529 days.

Prayer is declined.

Application is dismissed.

Main Appeal

Owner of the offending vehicle through his legal representatives, has filed the instant appeal assailing the award dated 8.8.2016 passed by the learned Motor Accident Claims Tribunal (hereinafter to be referred as the Tribunal), Panchkula and in terms of which a claim petition stands partly accepted and an amount of Rs.4,13,460/- has been passed in favour of the claimants.

Counsel for the appellant(s) has argued that the Tribunal has erred in not appreciating that the accident in question never took place with

the vehicle of the appellant(s). Further contended that it is a case of misreading and mis-appreciation of evidence inasmuch as PW-2 Malkiat Singh, who had appeared as an alleged eye witness had stated that he could not tell the registration number of the offending vehicle and had further deposed that the FIR had been lodged by the police on their own. Further urged that the Tribunal has erred in drawing an adverse inference against the appellant(s) only on account of the FIR having been lodged. No other point was urged.

Having heard counsel for the appellant(s) at length, I am of the considered view that there is no merit in the instant appeal and the same merits dismissal.

Briefly noticed, claim petition had been filed seeking compensation by the parents on account of death of their son Ranjha in an accident that took place on 6.7.2013 involving tractor-trolley bearing Sr. No. RS-1367, Engine No.NJRS 1367, Make Mahindra Arjun-555 DI. Claimants had stated that on 5.7.2013 at about 10 P.M one Sethi son of Sukhdeva along with respondent no.1 i.e. Sarabjit Singh, who was working as a driver on the tractor-trolley in question and owned by respondent no.2 Bir Singh came to the house of the claimants and requested Ranjha (since deceased) to come along for loading of sand in the tractor-trolley from the river bed. Further it was averred that on 6.7.2013 at about 3 A.M Goldy son Chuhar Singh came to the house of the claimants and informed that Ranjha as also Sethi had suffered serious and grievous injuries on account of capsizing of the tractor-trolley in the river. Police authorities were immediately informed and Ranjha was shifted to General Hospital, Sector 6 Panchkula, where doctors declared him 'brought dead'. FIR No.177 dated 6.7.2013 for

commission of offence punishable under sections 279, 337, 304-A I.P.C was registered at Police Station Chandimandir, district Panchkula. Claim set up was that deceased Ranjha was 17 years of age at the time of death and was doing labour work and earning Rs.3200/- per month and that the claimants being parents of the deceased were fully dependent on the income of the deceased.

Respondent no.1 Sarabjit Singh (driver) contested the claim petition by filing a written statement setting up a case of denial. The present appellant(s) being L.Rs of respondent no.2 (Bir Singh) owner of the vehicle inspite of being duly served, chose not to join proceedings and were accordingly proceeded ex-parte vide order dated 10.7.2015. The Insurance Company, even though, impleaded by the claimant as respondent no.3, was deleted from the array of parties on an application moved by the Insurance Company vide order dated 14.12.2015 as the offending tractor-trolley was not insured at the time of accident. It may also be noticed that respondent no.1 chose not to lead any evidence and was also proceeded ex-parte vide order dated 2.7.2016.

The following issues were framed by the Tribunal:-

- “1. Whether on 05.07.2013, Ranjha son of Sh. Malkiat Singh died on account of sustaining injuries in the accident in question which took place due to rash and negligent driving of tractor bearing Sr. No.RS-1367, Engine No.NJRS 1367, Make Mahindra Arjun-555 by respondent no.1?OPP.*
- 2. If issue no.1 is proved, whether the claimants are entitled to any compensation, if so, to what amount and from whom?OPP.*
- 3. Relief.”*

Perusal of the pleadings/record would reveal that Malkiat Singh, claimant no.2 i.e. father of the deceased Ranjha appeared as PW-2 and reiterated the entire version as set up in the claim petition and also tendered in evidence his duly sworn affidavit Ex.PW-2/A. Claimants further examined Sube Singh, Criminal Ahlmad, who brought the criminal case file titled as 'State Vs. Sarabjit Singh' pertaining to FIR No.177 dated 6.7.2013 and proved certified copy of challan Ex.PW-1/A, certified copy of site plan of place of occurrence Ex.PW-1/C, death report of deceased Ranjha dated 6.7.2013 as Ex.PW-1/D and copy of Post Mortem Report Ex.PW-1/E. Also adduced on record was a certified copy of order dated 26.9.2013 Ex.PW-1/R which reflected that the offending tractor-trolley had been taken on *superdari* by the registered owner namely Bir Singh.

In the considered view of this Court, the entire evidence of the claimants having gone un rebutted and non-appearance of the respondents without any explanation was a good and sufficient ground for the Tribunal to have drawn adverse inference against them. Furthermore, the claim petition had been filed under Section 163(A) of the Act and as such, the claimants were obligated to establish the use and involvement of the offending tractor-trolley in the occurrence and were not required to establish negligence of the driver.

Even though, counsel for the appellant(s) has made a feeble attempt to suggest that the compensation amount awarded is on the higher side, yet, such contention and submission has not been substantiated inasmuch as it has not been contended as to on which parameters/head the compensation awarded is excessive.

In view of the discussion herein above, no warrant for interference is made out.

Appeal is dismissed on merits as also on the ground of delay.

Since the main appeal has been dismissed, pending application (s), if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

13.07.2018

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No