

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

FAO-2699-2019 (O&M)
Decided on : 07.12.2019

Manjeet

..... Appellant

Versus

Kuldeep Singh and anr.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Baljeet Beniwal, Advocate
for the appellant.

Manjari Nehru Kaul, J.

CM-9101-CII-2019

This is an application under Section 5 of the Limitation Act for condonation of delay of 12 days in filing the appeal.

For the reasons mentioned in the application, same is allowed and the delay of 12 days in filing the appeal is condoned.

FAO-2699-2019

Instant appeal has been preferred by the claimant against the impugned award dated 25.10.2018 passed by Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal') whereby his claim petition under Section 166 of the Motor Vehicles Act, 1988 was dismissed.

Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-claimant before the learned Court below may be noticed.

On 27.08.2016 at about 10.30 am, when the claimant while

riding his motor cycle bearing registration No.HR-13EJ-6927 reached near Blind School, Rasal Ala Chowk a Tata-407 bearing registration No.HR-55S-2508 came in a rash and negligent manner being driven by respondent No.1 Kuldeep Singh and struck against his motorcycle as a result of which the claimant fell down on the road and sustained injuries. An FIR No.986 dated 25.10.2016 under Sections 279/337 IPC was registered at Police Station Jhajjar. The cousin brother of the claimant along with some passers-by removed the claimant to Sri Bala Ji Action Medical Institute, New Delhi where he remained admitted and had to be operated upon several times. On 28.08.2016, the police officials on receiving information about the accident reached the hospital, however, the appellant-claimant was unfit to make any statement. After his discharge from the hospital, the claimant visited the hospital for his treatment on a number of occasions for which an amount of Rs.15 lakhs was spent on his treatment, transportation, special diet etc. It was further averred by the claimant that as he was a student, tutor and the sole bread earner of his family and due to the injuries suffered by him in the accident, he had suffered considerable loss of income during the period of his treatment. It was further submitted that an attendant would be required to look after him in view of his condition. Hence, the claimant prayed that an amount of Rs.25 lakhs along with interest @ 18% per annum be granted to him.

Upon notice, in the written statement filed on behalf of respondent No.1 i.e. driver and the owner of the offending vehicle the factum of the accident with the alleged vehicle was denied and the vehicle of the respondent had been falsely involved in the case.

Respondent No.2 – Insurance Company in its written statement took preliminary objections inter alia of collusion, no locus standi and cause of action, misjoinder and non-joinder of the necessary parties besides alleging that the driver of the offending vehicle did not have any valid and effective driving license at the time of accident. It was further alleged that the FIR had been got lodged in collusion with the police and thus, there was no question of any liability of the insurance company. It was further submitted that it was in fact a hit and run case and since offending vehicle could not be apprehended, the alleged vehicle had been introduced as the offending vehicle.

From the pleadings, the Tribunal framed the following issues:

1. Whether claimant Manjeet s/o Ranbir Singh sustained injuries in a road side accident, which took place on 27.08.2016 at about 10.30 am at Dulhera-Jhajjar road near Blind School, Rasal Ala Chowk due to rash and negligent driving of vehicle i.e. TATA-407 bearing registration No/HR-55S-2508 by its driver-respondent No.1? OPP
2. Whether claimant is entitled to any amount as compensation, if so, what amount and from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident, if so, its effect? OPR
4. Relief.

To prove its case, the appellant stepped into the witness box as

PW-1 and examined five other witnesses. He also tendered relevant documents Ex.P-1 to P-17. On the other hand, respondents No.1 and 2 also tendered relevant documents Ex.R-1 to R-10.

On an analysis of the evidence and other material available on record, the Tribunal dismissed the claim petition filed by the appellant by returning a finding that it could not be proved that the offending vehicle which was allegedly being driven by respondent No.1- Kuldeep Singh was involved in the accident in question.

After hearing learned counsel for the appellant and on perusal of the impugned award passed by the Tribunal, in my opinion, no interference is warranted in the impugned award as the accident in question occurred on 27.08.2016 and soon thereafter the claimant was medically treated at Sri Bala Ji Action Medical Institute, New Delhi. As per the MLR Ex.P-2 the claimant was stated to have been brought to the hospital by the PCR, which is contrary to the version of the complainant that he was brought to the hospital by his cousin brother and the passers-by. The very factum of the injured-claimant having been removed to the hospital by the PCR indicates that the alleged eyewitness to the occurrence i.e. PW-3 Ajay, could not have been present at the spot. Had PW-3 Ajay indeed been present at the spot not only would have the injured been removed to the hospital by him but said PW-3 would have made his statement to the police soon after the occurrence in question where he would have also made a mention about the offending vehicle. Further, PW-3 Ajay in his cross-examination has admitted that when he reached the spot after the accident, the offending vehicle was not present at the spot. Hence, PW-3 Ajay does

not come across as a trustworthy and truthful witness and his testimony deserves to be discarded. Moreover, the unexplained delay of almost 2 months in lodging of the FIR creates a further dent in the case of the claimant specially when it is not his case that he remained unconscious for the entire preceding period of two months or he was not fit to make a statement in the preceding two months from the date of lodging of the FIR. Further, no evidence has also been brought on record that the claimant remained admitted during the preceding two months before the filing of the FIR in Sri Bala Ji Action Medical Institute, New Delhi.

As a sequel to the above discussion, the present appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

07.12.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No