

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

CM No. 22143-CII of 2015 and
CM No. 22144-CII of 2015 and
FAO No. 3965 of 2006 (O&M)
Date of decision : May 09, 2019

Manbir Singh

.....Appellant

Versus

Krishan Kumar and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anil Shukla, Advocate
for the appellant.

Mr. Ashish Yadav, Advocate
for the respondents.

LISA GILL, J.

Costs in terms of order dated 14.12.2018 have been deposited.

Prayer in the application is for recalling of order dated 13.07.2007 passed in FAO No. 3965 of 2006 vide which the said appeal was dismissed for non prosecution.

There is a delay of 2983 days in filing of the application for restoration of the appeal. The grounds mentioned in the application, which is accompanied by an affidavit of the applicant, are as under:-

“ That the above mentioned case came up for hearing on 13.07.2007 before this Hon'ble Court and the counsel for the appellant missed the case in the list and the same was dismissed in default. In the month of July, 2007 the counsel has shifted his house from House No. 2713, Sector 38-C to House No. 2422, Sector 38-C, Chandigarh and in the shifting the file has been placed in the disposed of cases by the clerk inadvertently. The appellant was informed by the counsel that the file is not traceable in the office and when the clerk of the counsel of the appellant was disposing of deciding case files,

the file of the appellant has been located in the month of October, 2015. The appellant has been called for moving the appropriate application and the same is being filed before this Hon'ble Court. The application is being moved immediately, however, there is delay of 2983 days in filing the application.”

Learned counsel for the applicant-appellant vehemently argues that the present is an appeal filed by the claimants seeking compensation on account of injuries received by him in a motor vehicle accident. Any kind of lapse on the part of the counsel/his office which was obviously beyond the applicant's control, should not visit the applicant with consequences. It is, thus, prayed that present applications be allowed.

Learned counsel for the non-applicant/respondents opposes the said applications while submitting that there is no plausible explanation for condonation of the colossal delay in filing of the application for restoration of the appeal. It is submitted that the applicant-appellant was clearly negligent in this case.

Heard, learned counsel for the parties.

It is not in dispute that this appeal, challenging award dated 22.05.2006 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal') whereby his petition under Section 166 of the Motor Vehicles Act was dismissed, was filed by the applicant-appellant within limitation. The appeal was thereafter dismissed in default due to non-appearance of the counsel. It is emphatically argued that the claimant should not suffer for the fault of the counsel, though learned counsel for the non-applicant submits that there is no reasonable explanation for the delay. Be that as it may, keeping in view the facts and circumstances specifically the stand of the learned counsel for the

appellant, it is considered just and expedient to condone the delay in filing of the application for restoration of the appeal and decide the same on merits.

Accordingly, delay in filing of the application under Order 41 Rule 19 CPC is condoned.

Order dated 13.07.2007 is recalled and appeal is restored to its original number.

With the consent of learned counsel for the parties, main appeal is taken up for hearing today itself.

Certified copies of the relevant records produced in Court today are taken on record subject to just exceptions.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 26.10.2004. It is pleaded that he alongwith his brother Jagpal Singh were proceeding towards Pataudi from their village Narhera on motor cycle bearing registration No. HR-29-C-9076. The motorcycle was driven by the appellant's brother – Jagpal Singh. When they reached near Shiv Mandir situated at Narhera Road, the offending vehicle, tractor bearing registration No. HR-26-E-4393 attached with trolley came from the opposite side and struck against the motorcycle of the appellant. The offending vehicle was driven by respondent No. 1, in a rash, negligent and zig- zag manner. As a result thereof, the appellant and his brother fell down and suffered injuries. Petition under Section 166 of the Motor Vehicles Act was filed by the appellant Manbir Singh seeking compensation for the injuries received by him. He claimed to be 24 years old, working as a draftsman and earning ₹4,500/- per month.

Learned Tribunal on considering the evidence on record dismissed the claim petition filed by the appellant while holding that the claimant failed to lead any evidence to prove, that the accident in question was caused due to the rash and negligent driving of the offending vehicle. Learned Tribunal observed that though the accident took place on 26.10.2004, FIR in question was lodged on 28.02.2007. The claimant was medico legally examined on 28.10.2004 as well. Learned Tribunal found that no plausible explanation for the same was forthcoming. It is further observed that the bills produced by the claimant also appears to be procured. It is, thus, concluded that the claimant failed to discharge the burden cast on him.

Learned counsel for the appellant vehemently argues that the learned Tribunal has grossly erred in law and on facts in dismissing the claim petition. PW3 Jagpal Singh, brother of the claimant, it is submitted has specifically deposed in respect to the accident as it occurred. Mere delay in registration of the FIR cannot be a ground to non-suit the claimant. Furthermore, there is specific medical evidence on record in the shape of testimony of PW1 Dr. Birender Yadav to prove that the accident in question took place on 26.10.2004 and the claimant received serious injuries. Learned Tribunal, it is submitted, has erred in dismissing the claim petition filed by the appellant. It is, thus, prayed that this appeal be allowed, award dated 22.05.2006 passed by the learned Tribunal be set aside and just compensation be awarded to the appellant.

Learned counsel for the respondents refutes the averments raised by learned counsel for the appellant while submitting that a well reasoned and logical award has been passed by the learned Tribunal, which calls for no interference whatsoever.

Heard learned counsel for the parties and have gone through the certified copies of the relevant record furnished in Court today.

As per the claim petition, the accident in question took place on 26.10.2004 at about 7.30/7.45 p.m. FIR (Ex.P17) was lodged at the instance of Jagpal Singh (PW3) on 28.10.2004. PW3 in his testimony before the learned Tribunal, stated that he was travelling by bus alongwith the appellant to drop him at Pataudi. However, in the next breath he stated that they were travelling by a motorcycle as the appellant was to board a bus. A tractor, it is further stated, came from the opposite direction being driven in a rash and negligent manner by its driver. Motorcycle was taken off the road by PW3 to avert the mishap but the tractor's trolley hit the motorcycle, on which both Jagpal Singh and appellant fell on the ground. PW3 further stated that the appellant was taken to Rewari in another tractor where he was hospitalised in the nursing home.

Without doubt PW3 has given the registration number of the tractor trolley in the FIR which was registered on 28.10.2004. There is no doubt about the proposition that mere delay in lodging of FIR in present proceedings is not sufficient in itself to discredit the claimant, however, it can doubtlessly be one of the various circumstances in a given case which point to the insufficiency of evidence to prove the claimant's case. Accident in this case is claimed to have taken place on 26.10.2004 at about 7.30 p.m. The appellant was taken to a private Nursing home at Rewari which is about 30 kilometres away from the site of accident, even though Civil Hospital Pataudi was only 1½ kilometres away. Learned counsel seeks to explain this by stating that no medical officer was available at Pataudi at that time, but there is no such evidence on record. This is coupled with the fact that the medico legal report in respect to the claimant – appellant, was also not

prepared on 26.10.2004 itself. PW1 Dr. Birender Yadav of Birender Hospital, Rewari admitted that Medico Legal Report/certificate was prepared on 28.10.2004 (Ex. P11). The x-ray report is also dated 28.10.2004 and not 26.10.2004. In case of injuries as pleaded, it is common knowledge that an x-ray would be conducted immediately in normal course and not after two days. It is further not explained as to why ruqa in this case was not sent immediately on 26.10.2004. There is indeed no explanation as to why, neither the police was informed on the same day nor FIR lodged besides the medical of the claimant not being conducted on the same day. It is further to be noticed that Dr. Birender Yadav, admittedly, has not produced any record from the hospital to prove that the claimant was admitted on 26.10.2004 itself. It is pertinent to note at this stage that the bills produced by the claimant also raise a suspicion inasmuch as the bills bearing the subsequent serial numbers are of an earlier date and those bearing earlier serial numbers are of later dates. Learned Tribunal has rightly observed that the oral testimony of doctor regarding date of admission while withholding the relevant documentary record, raises a justified suspicion about the genuineness of the accident.

Furthermore, there is merit in the argument raised by learned counsel for the respondents that in case of a tractor hitting the motorcycle from the front, it is not possible that Jagpal Singh (PW3) who was driving the motorcycle, would not have suffered even minor injuries in the accident. His presence at the spot, therefore, does become suspect. Furthermore, mechanical reports of the offending vehicle or the motorcycle are not on the record of this case, nor were they found in the file of the criminal case, duly summoned and perused by the learned Tribunal as categorically mentioned

in award dated 22.05.2006. In the proceedings under Section 166 of the Act, it is incumbent upon the claimant to prove his case. In the present case, evidence led by the claimant is clearly insufficient and the appellant has failed to prove his case on the basis of preponderance of probabilities.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 22.05.2006 passed by the learned Tribunal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

May 09, 2019

rts

(Lisa Gill)
Judge

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