

**CM Nos. 9598 & 9599-CII of 2018 in/and
FAO No. 5110 of 2012 (O&M)**

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

**CM Nos. 9598 & 9599-CII of 2018 in/and
FAO No. 5110 of 2012 (O&M)
Date of Decision: July 10, 2019**

Chet Ram and another

..... Petitioner(s)

Versus

Mahabir Singh Gujjar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashok Kaushik, Advocate
for the applicant-appellants.

Mr. Suman Jain, Advocate
for non-applicant/respondent no.3.

LISA GILL, J.(oral)

**CM-9598-CII-2018 and
CM-9599-CII-2018**

The present appeal was dismissed in default on 09.02.2015.
CM-4161-CII-2015 filed for restoration of the appeal was also dismissed in
default on 11.03.2015. Present applications have been filed for recalling of
both orders dated 11.03.2015 and 09.02.2015 and consequent restoration of
the appeal. There is a delay of 1154 days in filing of this application (CM-
9599-CII-2018).

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Learned counsel for the applicant-appellant vehemently argues that the present is a case wherein the petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 has been dismissed by the learned Motor Accident Claims Tribunal, Palwal without any reference to the evidence on record. The claimants' appeal and the subsequent application for restoration of the appeal have been dismissed in default for no fault of the applicants/appellants. The applicants/claimants should not be made to suffer for no fault of their own. It is, thus, prayed that the applications be allowed.

Learned counsel for the non-applicant/respondent/insurance company resists these applications.

I have heard learned counsel for the parties.

Keeping in view the fact that the present is an appeal filed by the claimants against dismissal of their petition under Section 166 of the Motor Vehicles Act and that Motor Vehicles Act being a beneficial legislation, I deem it appropriate to condone the delay in filing of the application. Orders dated 11.03.2015 and 09.02.2015 are recalled. Consequently, the main appeal is restored to its original number and is taken up for hearing today itself with the consent of the learned counsel.

Applications are disposed of.

Main Appeal:-

This appeal has been filed by the appellants-claimants challenging award dated 11.05.2012, passed by the learned Motor Accident Claims Tribunal, Palwal dismissing the petition under Section 166 of the Motor Vehicles Act, 1988, filed by the appellants.

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The appellants in their petition pleaded that Ravinder (deceased) was proceeding from Gurgaon on 23.07.2009 to meet his brother, who is a resident of Palwal. After meeting his brother and other family members Ravinder was returning to Guragon on his own motorcycle bearing registration No. DL-3SAA-6399. Near Agra Chowk, Palwal, the offending truck bearing registration No. HR-38J-7621 struck against the motorcycle. The offending truck was being driven in a rash and negligent manner and at a high speed by its driver. Ravinder fell on the road and sustained serious injuries. Bal Kishan son of Siri Chand who was present on the spot is claimed to have noted the registration number of the offending truck. The deceased was taken to the Government Hospital, Palwal as an unidentified person and thereafter, referred to Safdar Jang Hospital, New Delhi but the injuries proved fatal. The dead body was identified by Chet Ram. FIR No. 251 was registered on 28.07.2009, under Sections 279, 304-A IPC at P.S. City Palwal. Ravinder deceased was claimed to be working in the private sector, earning a sum of Rs.5,000/- per month. Compensation of Rs.10,00,000/- was claimed.

Respondent No.1 & 2 i.e. the owner and driver appeared in person once, but did not appear thereafter. They were proceed against *ex-parte* on 11.05.2010. The petition was contested by the respondent-insurance company while specifically pleading that there is inordinate and unexplained delay in lodging of the FIR. Violation of the terms and conditions of the insurance policy as well as allegations of collision were raised. Following issues were framed:-

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1. Whether Ravinder son of Chet Ram has died due to injuries in a motor vehicle accident that took place on account of rash and negligent driving by its driver Mahabir Singh Gujjar of vehicle No. HR-38J-7621 owned by respondent no.2 and insured by respondent no.3? OPP
2. If issue no. 1 is proved whether petitioners are entitled to compensation, if so to what amount and from whom? OPP
3. Whether the respondent no. 1 was not holding a valid and effective driving licence at the time of accident and was being driven in violation of conditions of insurance policy? OPR
4. Whether the petitioner has no locus-standi and cause of action to file the claim petition? OPR
5. Relief.

Learned Tribunal dismissed the claim petition while holding that there is an unexplained delay in lodging of the FIR and that a clear cut case of planting of a vehicle in connivance with respondents no.1 & 2 was proved from the evidence on record. No detail of the vehicle or of the driver was mentioned in the FIR. It is further held that PW-3 Sham Lal was a procured witness. It is observed that collusion between the claimants and respondents 1 and 2 was fortified by the fact that after appearing on 28.09.2010 without even service of any notice, they did not appear thereafter and that the counsel who was representing the accused in the criminal proceedings was the one who had filed the claim petition on behalf of the claimants.

Aggrieved from the dismissal of their petition, this appeal has been filed.

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Learned counsel for the appellants argues that learned Tribunal has wrongly dismissed this appeal whereas the evidence on record clearly proves the case of the claimants on the touchstone of preponderance of probabilities. It is further submitted that mere delay in the lodging of the FIR cannot detract from the credibility of the case set up by the claimants. The eyewitness of the accident, PW-3 Sham Lal has clearly deposed about the accident in question. It is thus prayed that the present appeal be allowed. Impugned award dated 11.05.2012 be set aside and just compensation be awarded to the claimants.

Learned counsel for the insurance company on the other hand refutes the above said arguments and submits that a well reasoned award has been passed by the learned Tribunal, which calls for no interference.

I have heard learned counsel for the parties and have gone through the file.

It is a matter of record that FIR No. 251 was registered on 28.07.2009 in respect to the accident which allegedly took place on 23.07.2009. Needless to say, mere delay in lodging of the FIR cannot be fatal to the case of the claimants in proceedings like the present. However, the attending circumstances in the instant case render delay in lodging of the FIR to be one of the supporting and corroborating factors in casting a cloud on the credibility of the claimants' case. It is a matter of record that there is no detail regarding the offending vehicle or of the driver in the FIR. PW-1 Jit Ram stated that Bal Kishan and Sham Lal informed him about the

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accident when they came to his house after the death of Ravinder. The details of the vehicle or the driver were admittedly not disclosed by PW-1 Jit Ram. Shyam Lal PW-3 deposed that he was an eyewitness of the accident and he shifted the deceased Ravinder to the hospital. However, this is not corroborated by any evidence on record. This stand is in fact negated by the MLR Ex. P-5. Furthermore, PW-3 stated that the offending vehicle was a tanker on which PWD was written whereas the vehicle in question is admittedly a private vehicle. Moreover, PW-3 stated that he did not visit village Pingore, therefore, it is not understandable as to how he narrated about the accident to PW-1. It is rightly observed by the learned Tribunal that in case PW-3 Shyam Lal or his relative Leekha had visited the said village to mourn the death of Ravinder, it would at best be within 13 days. There is no explanation as to why the details were not brought to the notice of the authorities for about 47 days.

Learned Tribunal has rightly observed that the factum of collusion between the claimants and respondent no.1 is writ large in the present case. Admittedly, respondents no.1 & 2 appeared in person on 28.09.2010 without any summons being served upon them. Thereafter, they did not appear and were proceeded *ex-parte*. Another glaring aspect in this case is that the advocate who filed an exemption application on behalf of respondent no.1/accused in the criminal case on 02.04.2010, was the one who filed the claim petition on behalf of the appellants on 16.10.2009. The said advocate was examined as RW-3. He was confronted with the

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application filed by him on behalf of respondent no.1 where there is a cutting on his name but his signatures on the said application Ex. R-1 are present. RW-3 gave an evasive reply while stating that signatures on the application Ex. R-1 may be his. Admittedly, there is no specific denial by RW-3. He later withdrew his power of attorney in the present matter.

Keeping in view the facts and circumstances and above, it is clear that the claimants miserably failed to prove their case on the touchstone of preponderance of probabilities. Learned counsel for the appellants is unable to point out mis-reading of any evidence or any illegality, perversity or infirmity in the impugned award 11.05.2012, passed by the learned Motor Accidents Claims Tribunal, Palwal, which calls for any interference by this Court at the instance of the appellants-claimants.

No other argument has been addressed.

There is a delay of 18 days in filing of this appeal. As the same has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Appeal is accordingly dismissed with no order as to costs.

July 10, 2019

Sunil

**(Lisa Gill)
Judge**

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