

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

F.A.O. No. 117 of 2015 (O&M)

DATE OF DECISION :- October 30, 2019

Vijender

...Appellant

Versus

Beer Sain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. J.S. Cooner, Advocate for the appellant.

Mr. D.P. Gupta, Advocate for respondent No. 3.

C.M. No. 453-CII of 2015

There is delay of 305 days in filing of the appeal. An application under Section 5 of the Limitation Act has been filed for condonation of such delay. Though the application is being opposed by learned counsel for the Insurance company but I find sufficient grounds to accept the application and condone the delay. Therefore, the application is allowed and delay is condoned.

F.A.O. No. 117 of 2015

Briefly stated the facts of the case are that petitioner-claimant Vijender, resident of District Jaipur, Rajasthan had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Beer Sain-driver, M/s Tommar Constructions Company, New Delhi-owner and Oriental Insurance Company Limited, New Delhi-insurer of dumper

bearing registration No. HR-55J-1694 claiming compensation on account of suffering injuries in a road side accident which had taken place on 27.7.2012 in the area of village Badopur, statedly on account of rash and negligent driving of dumper bearing registration No. HR-55J-1694 by respondent No. 1-Beer Sain.

The Motor Accident Claim Tribunal, Narnaul where the claim petition was instituted had issued notice to the respondents who had appeared through counsel and filed written statements opposing the claim petition.

Issues on merits were framed. On conclusion of the trial, the Tribunal vide Award dated 11.11.2013 dismissed the claim petition with no order as to costs mainly on account of the reason that petitioner-claimant could not prove that he had sustained injuries in the road side accident due to rash and negligent driving of respondent No. 1- Beer Sain-driver of dumper bearing registration No. HR-55J-1694. As a matter of fact, respondent No. 1 had not stepped into the witness box to support his version.

On the claimant filing the present appeal, notice was issued to respondent Insurance Company which had put in appearance through counsel.

I have heard learned counsel for the parties besides going through record.

Learned counsel for the claimant has contended that the appellant being a resident of Jaipur, Rajasthan could not properly pursue the matter before the Tribunal at Narnaul and could not get in his own statement recorded which resulted in dismissal of the claim petition. The claimant has got a very good case and he be given an opportunity to get his own statement recorded and to lead evidence in support of his version.

Learned counsel for the Insurance Company opposes this request

but I find that ends of justice demand that the appellant-claimant should be given an opportunity to establish his case before the Tribunal keeping in view the nature of proceedings.

Therefore, the appeal is accepted, the impugned Award is set aside and the matter is remanded to the Motor Accident Claims Tribunal, Narnaul for fresh decision after giving two reasonable opportunities to the claimant to conclude his evidence. The respondents would also be afforded adequate opportunities to lead further evidence if they so desire and then after hearing arguments the matter be decided afresh. Since the case is quite old the entire exercise be completed within a period of six months from the date of receipt of copy of this order in the Tribunal. The Tribunal shall issue a notice to respondents No. 1 and 2 who are not being represented before this Court so as to procure their presence. Since the matter has got delayed on account of some lapse on the part of the claimant this fact would be taken into consideration while granting the interest if the claim petition is accepted. The parties through their counsel are directed to appear before the Motor Accident Claims Tribunal, Narnaul on 19.11.2019.

(H.S. MADAAN)
JUDGE

October 30, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No