

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

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FAO No.2461 of 2015 (O&M)
Date of decision: 14.05.2019

KAILASH RANI AND ANR

... Appellants

Versus

KRISHAN CHANDER AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep P. Chahar, Advocate for the appellants.
Mr. Sandeep Singh, Advocate for respondent No.1.
Mr. Aman Mittal, Advocate for
Mr. AS Sidhu, Advocate for respondent No.4.

REKHA MITTAL, J. (Oral)

CM-7617-CII-2015

Heard.

Allowed as prayed for. Delay of 513 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 15.07.2013 passed by the Motor Accidents Claims Tribunal, Rohtak whereby application for grant of compensation in respect of death of Prem Singh on account of sustaining injuries in a motor vehicular accident that took place on 15.07.2010 has been dismissed primarily on the ground that the appellants/claimants have failed to establish nexus between injuries sustained, if any, in the occurrence and death on 28.08.2010.

Counsel for the appellants would inform that though there is a gap of more than one month between the date of accident on 15.07.2010 and death of Prem Singh on 28.08.2010 but during the intervening period, Prem Singh remained under treatment of neurologist(s). It is further argued that the appellants filed an application dated 26.03.2013 for summoning Dr. Sonal Gupta, Senior Consultant, Department of Neurosurgery, Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi along with treatment record of Sh. Prem Singh and the same was allowed by the Tribunal on the same day. Later, in the month of May, 2013, claimants filed another application to summon Dr. Prakash Khatri, Senior Consultant, Department of

Neurosurgery from the aforesaid hospital in place of Dr. Sonal Gupta as she could not be traced in the hospital concerned and the same was allowed by the Tribunal vide endorsement dated 02.05.2013 but the diet money was ordered to be deposited at own responsibility of the claimants. It is further argued that evidence of the claimants was closed by order of the Court because of their having availed number of opportunities for adducing evidence and for that reason, the claimants could not examine Dr. Prakash Khatri to establish their plea that Prem Singh died due to injuries sustained in the accident that took place on 15.07.2010. He would pray that order closing evidence and award passed by the Tribunal may be set aside and the appellants may be allowed one opportunity to secure presence of Dr. Prakash Khatri from Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi along with relevant records to establish their plea of nexus between the injury and death of Prem Singh. It is further argued that a serious prejudice shall be caused to the claimants in case they are not permitted to establish their plea in this regard.

Counsel representing the respondents have seriously contested plea of the appellants with the submissions that the appellants availed various opportunities for adducing evidence but failed to complete their evidence and as such, there was no option with the Court except to close evidence by order of the Court.

I have heard counsel for the parties, perused the paper book and records.

Before advertng to the submissions, it is pertinent to mention that the file received from the quarter concerned is not properly page marked. The District Judge, Rohtak is directed to issue necessary instructions/directions that the files/records sent to the High Court are page marked correctly and the documents are placed at appropriate place.

Perusal of records of the Tribunal would reveal that issues in the case were framed on 01.12.2011 and the case was adjourned to 16.12.2011 for evidence of the claimants. On 12.01.12, counsel for the claimants expressed to file an application under Order 1 Rule 10 CPC and the same was filed on 18.01.2012. Thereafter, the case remained pending for summoning of respondents No.5 to 7 till 22.03.2012. On 22.03.2012, the

Court allowed last opportunity for entire evidence of the claimants. Subsequent thereto, an application was filed for withdrawal of the petition with permission to file petition before the Workmen's Commissioner. The matter remained pending for the said purpose till 27.11.2012. The application was withdrawn and the case was fixed for evidence of the claimants.

The claimants availed certain opportunities for adducing evidence but failed to examine the doctor. The Tribunal allowed application for summoning Dr. Sonal Gupta from the hospital at New Delhi and thereafter Dr. Parkash Khatri of the said hospital as Dr. Sonal Gupta was stated to be not available in the hospital concerned.

There cannot be dispute that the Tribunal owes an obligation to assess just and reasonable compensation. The Tribunal is required to assess compensation even in cases where information is received by the Tribunal directly from the police under Section 158 of the Motor Vehicles Act, 1988. In the given scenario, the Tribunal should not have hurried to close evidence of the claimants merely on the ground that the case falls under Action Plan and the claimants have availed numerous opportunities for adducing evidence. That being so, order passed by the Tribunal closing evidence of the claimants is liable to be set aside and as a consequence, award passed by the Tribunal is required to be set aside and the matter needs remittance to the Tribunal for decision of the case afresh after procuring presence of Dr. Parkash Khatri along with relevant records by issuing summons through process of the Court as well as dasti process to be issued to the claimants. I order accordingly.

In view of what has been discussed hereinabove, the appeal is allowed; order closing evidence of the claimants and award passed by the Tribunal are set aside. The matter is remitted to the Tribunal for decision of the case afresh on the basis of materials already on record and additional evidence to be adduced by the appellants/claimants and rebuttal evidence, if any, adduced by the respondents. The appellants/claimants would be entitle to examine any other witness besides Dr. Parkash Khatri to establish their plea that deceased died due to injuries sustained in the accident. Parties through their counsel are directed to appear before the Tribunal on

31.05.2019. The Tribunal shall procure presence of respondent(s) therein who is not represented by a counsel before this Court. The Tribunal shall put its best efforts to dispose of the case within six months of the parties putting in appearance. A copy of the judgment be sent to District Judge, Rohtak.

14.05.2019

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No