

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

FAO-357-2017(O&M)

Date of decision:-30.5.2019

Moni Devi and others

...Appellants

Versus

Sarita Rani and another

...Respondents

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

Present: Mr.Ashwani Arora, Advocate
for the appellants.

Mr.Jagjit Singh, Advocate for
Mr.Ashwani Talwar, Advocate
for respondent No.2.

H.S. MADAAN, J.

CM-1298-CII-2017

The appeal in question has been filed by the claimants belatedly by 66 days. The reasons given in the instant application under Section 5 of the Limitation Act seeking condonation of delay are that the appellant No.1 is a widow, whereas appellants No.2 and 3 are minors; that there was not active member in the family to pursue the matter and get the appeal filed within time; furthermore the appellants had got financial crunch also. The appellants further contended that the delay is not intentional but for these reasons.

The application is being opposed vehemently on behalf of the respondents submitting that no ground is made out to condone the delay.

However, after hearing the counsel for the parties and going through the record, I find that sufficient reasons exist for condonation of delay.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice.

In the present case as per version of the claimants, they had lost their only earning member in a road side accident. The claim petition filed by them has since been dismissed by the Tribunal. At least they deserve hearing on merits in the matter rather than non-suiting them on technical ground.

Even otherwise, the appellants would not have gained anything by delayed filing of the appeal. The reasons given by them seems to be plausible and convincing. The delay is not on very high side. Therefore, the application is allowed and delay of 66 days in filing of the appeal stands condoned.

FAO-357-2017(O&M)

Briefly stated, facts of the case are that petitioners/claimants Smt.Moni Devi – wife, Ms.Poonam aged about 16 years and Ms.Anjali aged about 11 years – minor daughters of Sh.Sohan Singh son of Sh.Darshan Singh, an unfortunate victim of a road side accident had

brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sarita Rani – owner and driver as well as Oriental Insurance Company, Ludhiana – insurer of car having registration No.PB10-AL-8888 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.50 lacs.

As per the version of the claimants Sh.Sohan Singh son of Sh.Darshan Singh, resident of House No.104, Sector 27-A, Chandigarh was aged about 40 years and was working as a Head Cook at Krishan Sweets, Sector 23, Chandigarh and getting a monthly salary of Rs.8,000/-; that on 25.8.2009 at about 11:05 p.m., the deceased was returning home from his place of work on his bicycle and when he reached near Cricket Stadium Chowk, Sector 16, Chandigarh, then the offending vehicle driven by respondent No.1 in a rash and negligent manner at high speed came from behind and hit the bicycle of deceased, as a result Sohan Singh suffered multiple grievous injuries; that he was taken to Government Civil Dispensary, Sector 40, Chandigarh, where he was declared brought dead; that an FIR No.261 dated 25.8.2009 for the offences under Sections 279, 337, 304-A IPC was registered at Police Station Sector-17, Chandigarh.

Notice of the claim petition was given to both the respondents, who put in appearance and offered a contest by way of filing separate written replies.

In the written reply filed on behalf of respondent No.1, she denied involvement of her vehicle in the accident submitting that a false FIR has been registered at the instance of Head Constable, who had given the particulars of the vehicle involved in the accident as Zen car of white

colour having registration No.PB10-AL-8888; that after the investigation by the police, it came out that vehicle having such registration number was actually a Santro car red in colour; that the mechanical report also revealed that vehicle bearing registration No.PB10AL-8888 was not involved in the accident, therefore a closure report was filed by the police; that the claimants as well as author of the FIR had nowhere stated that at the time of accident, who was driving the vehicle.

In the written reply filed on behalf of respondent No.2 – insurance company, it also denied the material assertions in the claim petition raising various legal objections with regard to maintainability of the claim petition etc. The version of answering respondent is almost the same as that of respondent No.1.

Both the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Sohan Singh has died in a road side accident due to rash and negligent driving of car bearing registration No.PB10-AL-8888 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation as prayed for? OPP.
3. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove their case, petitioner/claimant No.1 got her

statement recorded as PW1 besides examining Sh.Harish Kumar as PW2.

On the other hand, respondent No.1 got her statement recorded as RW1 besides examining her husband Sh.Prem Kumar as RW2.

After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh has dismissed the claim petition vide award dated 31.5.2016.

This award left the petitioners/claimants aggrieved and they have preferred an appeal against the said award, notice of which was given to respondents. Both the respondents had initially put in appearance. Subsequently, there was no representation on behalf of respondent No.1.

The claimants have moved an application under Order 41 Rule 27 CPC read with Section 151 CPC for permission to examine the eye-witness before the Tribunal in order to prove the involvement of vehicle and negligence of respondent No.1 in causing the death of Sh.Sohan Singh.

Inter alia, in the application it is contended that HC Kirpal Singh, who lodged FIR No.261 dated 25.8.2009 with regard to the accident and happened to be an eye-witness could not be examined before the Tribunal since he had retired from service; that the Tribunal has dismissed the claim petition filed by claimants mainly for that reason and examination of HC Kirpal Singh is necessary for just decision of the case, therefore, the application be accepted.

The said application is being opposed tooth and nail on behalf of the respondent stating that the application does not fall within

four corners of Order 41 Rule 27 CPC and deserves to be dismissed.

Learned counsel for the respondent No.2 has referred to authority **Mauji Ram Versus Onkar Singh, 1998(2) RCR(Civil) 375.**

I have heard learned counsel for the parties besides going through the record and I find that ends of justice demand that the application should be accepted. A perusal of the impugned award goes to show that while dealing with issue No.1, the Tribunal has taken the non-examination of HC Kirpal Singh by the appellants adversely against them. The Tribunal has further observed that as per FIR No.261 dated 25.8.2009 the vehicle involved in the accident was a car make Zen, whereas after verification the abovesaid registration number was found to be of a vehicle make Santro and that the police had furnished Untraced Report in respect of the accident in question.

In my view to throw proper light on the controversy examination of HC Kirpal Singh is necessary. Here it may be mentioned that the Tribunal has taken hyper technical view in the matter while dismissing the claim petition rather than adopting a sympathetic approach. Therefore, since the interest of justice demand that the application should be accepted, the same is allowed.

The case law i.e. ***Mauji Ram Versus Onkar Singh*** (supra) referred to by learned counsel for the respondent No.2 does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Resultantly, the appeal is disposed of inasmuch as Award under appeal is set aside and the case is remanded to the Motor Accidents

Claims Tribunal, Chandigarh with a direction to fix some date for the purpose of examination of HC Kirpal Singh as a witness to be summoned by the claimants after depositing the necessary charges. The said witness would be allowed to be cross-examined on behalf of the respondents. Then respondents may be given an opportunity to lead evidence in rebuttal and then after hearing arguments the claim petition be decided afresh without being influenced by the findings recorded earlier.

The parties through their counsel are directed to appear before the Tribunal on 22.7.2019.

30.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No