

DHARAM VIR
2019.02.08 14:26

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

FAO No.911 of 2019(O&M)
Decided on:04.02.2019

IFFCO Tokio General Insurance CompanyAppellant

versus

Jakir Hussain and othersRespondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Vandana Malhotra, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral)

CM-2862-CII-2019

This application has been filed for condoning the delay of 50 days
in preferring this appeal.

In view of the averments made in the application, the same is
allowed and the delay 50 days that has occurred in filing this appeal is
hereby condoned.

The application stands disposed of.

CM-2861-CII-2019

This application has been filed for condoning the delay of 9 days
in re-filing this appeal.

In view of the averments made in the application, the same is
allowed and the delay 9 days that has occurred in re-filing this appeal is
hereby condoned.

The application stands disposed of.

FAO-911-2019

1. This appeal has been directed against the Judgment and Award dated 09.07.2018 passed in MACT case No.1529 of 2016 by the Motor Accident Claims Tribunal, Mewat, by which after recording a finding that the accident was due to the rash and negligent driving by the driver of the vehicle no.HR-74-A-2952 (hereinafter referred to as 'the offending vehicle' or 'offending truck') and due to which the driver-Jakir Hussain of the vehicle no.HR-74-A-2384 received grievous injuries and was admitted to AIIMS, New Delhi and thereafter, one of his leg was amputated and he was declared permanently disabled to the extent of 90%, awarded of a sum of Rs.8,25,230/- alongwith interest at the rate of 7% per annum from the date of filing of the claim petition till its actual realisation.

2. Learned counsel appearing of the appellant has submitted that that infact the alleged offending truck was not found at the spot by the police and the statement of the injured person was also not taken for the reason that he was unfit to make his statement as per the report of the doctor. His statement, however, was taken on 17th August, 2016, but FIR was registered on 20.07.2016 against unknown vehicle and unknown driver. However, after the statement of injured-respondent no.1 it appears that the owner of the offending truck surrendered the vehicle. Thus, it is contended that, since there is no eyewitness in this case, it was not a fit case in which, on the basis of sole statement of the claimant, the claim petition could have been allowed. It is also contended that the surrender of the offending truck by the owner raises suspicion as to why he on his own would surrender the vehicle. It may also indicate towards some sort of connivance between the claimant and the owner of the truck.

However, upon going through the impugned Judgment, this Court does not find any force in the submissions made on behalf of the appellant.

3. The reason why the offending vehicle was not recovered from the place of occurrence stands answered by the appellant itself as it is submitted at the time of hearing of the case that the offending vehicle escaped from the scene. So far the statement of only one person is concerned, it is well settled that the Tribunal, while considering the claim petition, is not required to put such a strict proof upon the claimant with respect to the accident or the manner of the accident, which is required for proving the case of the prosecution in a criminal trial. If other eyewitness is not available and the victim is available and he has given his statement, no wrong had been committed by the Tribunal by accepting such statement, moreover when he must have been put to the test of cross-examination also. It is not stated that at the time of cross-examination he has been given some contradictory statement.

4. So far as, angle of connivance between the claimant and the owner of the truck is concerned that has also no foundation. If the appellant alleges some fraud etc., then cardinal principle is that such allegation should be part of pleading and thereafter some positive evidence would be required to be adduced in support thereof. Merely raising a finger of suspicion would not be enough to dislodge the claimant who has been declared 90% permanently disabled by the board of doctors.

It is also admitted position that the driver of the offending truck is facing trial for the alleged occurrence.

In view of the evidence led by the claimant alongwith aforesaid facts that the criminal trial is going on against the driver of the offending vehicle would be sufficient to hold that the accident was the result of rash and negligent driving of the driver of the offending truck as the owner and driver of the offending truck did not lead any evidence to rebut what has been alleged by the claimant.

No other ground has been raised at the time of hearing by the appellant, save and except, that have already been dealt with as above.

In the result this appeal, being devoid of any merit, is dismissed.

However, there would no order as to cost.

February 04, 2019

dharamvir

(Dr. RAVI RANJAN)
JUDGE

Whether speaking/reasoned :Yes/No

Whether Reportable :Yes/No