

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

**FAO No. 289 of 2019 (O&M)
Date of Decision: 01.03.2019**

New India Assurance Company Ltd.

..... Appellant

VERSUS

Vipin Kumar and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vinod Chaudhari, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM-1082-CII-2019

This is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 51 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 51 days in filing the appeal is condoned.

FAO No. 289 of 2019

1. This is an appeal that has been filed by the Insurance Company against the common award dated 27.07.2018 passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as

the 'Tribunal') whereby two claim petitions i.e. (i) Kranti Devi and others Vs. Dedraj and another, and (ii) Vipin Kumar Vs. Dedraj and another, under Section 166 of Motor Vehicles Act 1988 (hereinafter referred as M.V. Act) arising out of the same vehicular accident, have been decided.

2. In brief facts of the case, as mentioned in claim petition titled Kranti and others Vs. Dedraj and another are, that on 20.3.2017 Ajit Kumar @ Ajitpal along with his friend Vipin (Chintu) (respondent No.1 herein) by riding on motorcycle bearing registration No. HR-35-J-2357 was going from Atali to Ateli Mandi. Following them, Balram son of Chanderpal resident of Kharagpur and Ajit son of Shri Ram resident of Atali were also going on another motorcycle. At 9:30 a.m when they reached near Hero Honda Agency Kanina road Ateli then from behind a pick up vehicle bearing No. RJ-32-GB-2034 driven by its driver at high speed, in rash and negligent manner came and hit their motorcycle, due to which they (Ajit Kumar & Vipin) fell on the road along with motorcycle and sustained multiple and grievous injuries. Ajit Kumar @ Ajitpal died on the spot. Vipin, Balram and other persons were witness to the accident. The postmortem of Ajit Kumar @ Ajitpal was got conducted at Civil Hospital, Narnaul. It is the case of the claimants that the accident took place due to rash and negligent driving by the respondent No.1/driver of pick up vehicle No. RJ-32-GB-2034. The said pick up was owned

by respondent no.1 and was insured with respondent No.2 therefore they are jointly and severally liable to pay compensation to the claimants.

3. The claim petition was contested by respondents-owner and driver of the offending vehicle by denying all the allegations while stating that the accident was not caused by answering respondent while driving pick up vehicle No. RJ-32-GB-2034. The answering respondent and vehicle in question have been falsely involved in the case to grab compensation. It was further alleged that he was holding a valid driving licence at the time of alleged accident. However, it was pleaded that if learned Tribunal comes to the conclusion that accident was caused by answering respondent, in that event respondent No.2 Insurance Company be held liable to pay the compensation as the vehicle was insured with it.

4. An additional plea was taken by the Insurance Company that respondent No.1/driver was not holding a valid driving licence and violated the conditions of insurance policy. The amount claimed is exorbitant. It was further averred that accident took place due to rash and negligent driving of motorcycle No. HR-35-J-2357 driven by deceased. It was averred that a false FIR was got registered to grab compensation. The vehicle in question was not involved in the accident. Thereafter, issues were framed and the claimant- Vipin himself stepped into the witness box as PW-2 and also examined

Ramshri (one of the claimants in the other case) as PW-1, Balram as PW-3, Vivek Sharma as PW-4 and Sajjan Singh as PW-5 apart from tendering relevant documents.

5. On appreciation of evidence, the Tribunal held that Vipin-respondent No.2 herein suffered multiple injuries in the said accident. As per claimant Vipin (PW2) after the accident, he was shifted to Civil Hospital, Ateli and after first aid, he was referred to a higher centre. He remained admitted in the Adatiya Neuro and Spine Specialist Hospital, Rewari till 6.3.2017. However there is no evidence of any permanent disability suffered by the claimant. By relying upon the judgment rendered by Hon'ble the Supreme Court in ***Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. (2010) 10 SCC 254*** wherein the principles have been laid down for determination of compensation in injury cases under the following heads :-

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment;
- (iii) Damages for pain, suffering and trauma as consequence of the injuries.

the Tribunal calculated the compensation in the following manner:-

1	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure	₹ 5,000/- ₹ 5,000/-
2	Loss of earning during the period of treatment.	₹ 5,000/-
3	Pain and suffering	₹ 5,000/-
	Total	₹ 20,000/-

6. It is argued that the claimant is not entitled to the compensation as assessed.

7. I have heard learned counsel for the appellant and with his assistance have also perused the pleadings.

8. Admittedly an accident took place on 20.03.2017 due to rash and negligent driving on the part of respondent/driver of vehicle No. RJ-32-GB-2034. FIR was got registered on the same day by Balram- eye witness. He appeared in witness box as PW3 and deposed about the accident attributing rash and negligent driving on the part of respondent No.1-driver. Vipin-injured/claimant also appeared as PW2, who tendered his affidavit Ex.P2/A in which he levelled categoric allegations of rash and negligent driving on the part of respondent/driver of vehicle No. RJ-32-GB-2034. He deposed that he was pillion rider on motorcycle No. HR-35-J-2357 which was being driven by Ajit Kumar at the time of accident. He deposed that he saw the accident.

9. The Insurance Company was not able to lead any cogent evidence to controvert the statements other than taking the plea that the driver was not holding a valid driving license, which plea was

found to be false. Thereafter based on the judgment rendered in *Arvind Kumar Mishra* case (supra) the quantum was assessed.

10. This court does not find any infirmity in the award or in the quantum assessed by the Tribunal, which is based on the judgments of the Hon’ble Supreme Court.

11. Appeal stands dismissed.

01.03.2019
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.