

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.15285 of 2018(O&M)
Date of Decision:08.01.2019

Suresh Kumar

.....APPELLANT

Vs.

National Insurance Company and others

.....RESPONDENTS

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

Present: Mr.Ramesh Hooda, Advocate for the appellant.

DR. RAVI RANJAN, J.(Oral)

CM No.28826-CII of 2018

This application has been filed seeking condonation of delay of about 1278 days in re-filing the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 1278 days in re-filing the present appeal, is condoned.

FAO No.15285 of 2018

Heard learned counsel for the parties and perused the records of this case.

This appeal has been preferred by the appellant/driver-cum-owner of the offending vehicle assailing the Judgment and Award dated 05.02.2015 passed by Motor Accidents Claims Tribunal, Hisar (for the sake of brevity 'the Tribunal') in MACT Petition No.16 of 1999. Respondents No. 2 to 4 (petitioners before the Tribunal) filed claim petition under Section 163A of the Motor Vehicles Act, 1988 (for the sake of brevity 'the Act') for claiming compensation.

However, subsequently, respondents No. 2 to 4 (petitioners before the Tribunal)

made a request on 08.02.2005 that their petition may be treated under Section 166 and not under Section 163A of the Act.

In view of the aforesaid statement, the claimants were required to prove the factum of accident and also death of deceased-Suresh Kumar.

Short facts of this case necessary to be considered for deciding the *lis* stand enumerated as under:-

As per the case of the claimant, on the fateful day, i.e., 09.10.1998 at about 7.30 P.M. Suresh Kumar alongwith five other persons was going from Loharu to Pilani to meet his relative in jeep bearing registration No.DL-1CE/0315. He himself was driving the jeep at a moderate speed, carefully and cautiously. At about 8.30 P.M. When he reached near village Pipli (Rajasthan), a truck bearing Registration No.HR-46/0528 came from the opposite direction which was being driven by its driver in a zig-zig manner, rashly and negligently, stuck into the jeep by coming on the wrong side of the road. As a result of collision, Suresh Kumar and two other persons died at the spot while the three other occupants of the jeep received injuries. Thereafter, an FIR No.238/98 under Sections 279/337/304-A IPC was registered. The claim petition regarding the death of Suresh Kumar was filed at Hisar. The Tribunal held vide its Judgment dated 06.12.2000 that it did not have the jurisdiction to decide the claim case and directed to return the claim application under Order VII Rule 10 of Code of Civil Procedure. However, vide order dated 08.07.2004, a Bench of this Court, in Civil Revision No.3509 of 2001, set aside the aforesaid decision and the directed the Tribunal to decide the case on its merit. This time the appellant was proceeded *ex-parte*, whereas, the Insurance Company contested the claim petition. The claim petition was allowed vide Judgment and Award dated 10.02.2005 and the Insurance Company was absolved from its liability on the ground that the appellant did not produce the particulars of the driving licence. Thereafter, the appellant filed an application under Order 9 Rule 13

of the Code of Civil Procedure for setting aside the *ex-parte* Award and the Award was set aside with a direction for re-hearing only on the limited ground as to whether the appellant was having a valid and effective driving licence or he had violated any terms and conditions of the Insurance Policy or not.

Therefore, the Tribunal vide the impugned Judgement and Award dated 10.02.2005 took a decision. While doing the same, the multiplier of 17 was selected and it found that the claimants are entitled for a sum of Rs.2,65,200/- as compensation. Claimant Smt. Sharda was allowed a sum of Rs.5,000/- on account of loss of consortium and Rs.2,000/- on account of funeral expenses. The total compensation amount thus comes to be Rs.2,72,000/- in favour of respondents No. 2 to 4 (petitioners before the Tribunal), with interest @ 6% per annum from the date of filing the claim petition till realization of the entire awarded amount to be paid by appellant-Suresh Kumar. It is also directed that the amount of compensation was required to be paid initially to respondents No. 2 to 4 (petitioners before the Tribunal) by the Insurance Company and, thereafter, the Insurance Company will be at liberty to recover the same from Suresh Kumar, driver-cum-owner of the offending truck.

The aforesaid Judgment and Award dated 10.02.2005 is under challenge in the present appeal.

It appears from the record that respondent No.2 examined one Satish Chander, Record Clerk, RTO, Mall Road, Delhi as RW-1, who has stated that record is not traceable as the same has been burnt in the fire which took place on 18.06.2007. Copy of the letter issued by Motor Licensing Authority has been brought on record as Ex.R1 and copy of DDR has been brought on record as Ex.R2. However, he has further stated that he had seen verification report dated 13.10.1999 which has been brought on record as Ex.R3. It further appears that the aforesaid report Ex.R3 shows that driving licence was valid upto 09.06.1994,

which was in the name of Suresh Kumar. The Tribunal has further recorded that it has perused the copy of the Award passed by MACT, Sikar (Ex.RX), but there is no finding regarding driving licence. Ex.R4 is the xerox copy of driving licence which has been produced by the appellant, who was respondent No.1 in the claim case before MACT, Sikar but that is not legible. Even the route permit has also not been proved on record by the appellant, i.e., driver-cum-owner.

As a result, it has been held once again that the driver was not having a valid driving licence at the time of the accident. Consequently, it has further been held by the Tribunal that Insurance Company would have a right to recover the amount of compensation.

Learned counsel for the appellant vehemently argued before this Court that a copy of the licence was produced before the MACT, Sikar, then a direct question was asked to him to produce the original licence which was issued by the Transport Authority to the appellant because a photocopy must be a copy of the original. The same could not be produced even after opportunity was given to the appellant taking a line that it was given to the police authority from where it was lost. But the aforesaid is nobody's case before the Tribunal. Therefore, such oral submission is noted only to be rejected.

If the records kept by the Transport Authority were burnt in the year 2007, still there would a question looming large upon the appellant as to why the driver-cum-owner did not appear before the Tribunal in a claim case which was instituted in the year 1999 which had resulted in passing *ex-parte* Judgement and Award against him. As per the stand, fire took place in the year 2007 and the claim case was filed in the year 1999. The appellant could well have appeared and produced the driving licence. The records would have been available at that point of time as the same was yet to be destroyed by fire. That apart, if the xerox copy is not legible at all and Motor Accident Claims Tribunal, Sikari also could not record

any finding regarding driving licence, it would be very difficult to hold that the appellant was having a valid driving licence at the time of the accident. Even the report Ex.R3 issued by the Transport Office discloses that the driving licence granted to the appellant was valid only up to 09.06.1994 and there is nothing on record to show that he got it renewed thereafter.

Having regard to the aforesaid discussion, in my considered opinion, this appeal fails.

In the result, this appeal is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

08.01.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No