

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

206/1

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IN VIRTUAL COURT

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**CM No. 9198-CII of 2017 in/and
FAO No. 2736 of 2017
Date of decision : 11.2.2021**

Harpinder Singh Gill and another **.....Petitioners**

Vs.

New India Assurance Company Limited and others **.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Chandan Deep Singh, Advocate, for the appellants
Mr. Pradeep Kumar, Advocate, for respondent No.1
Mr. K.S. Sidhu, Advocate, for respondents No.2 to 6

Rajbir Sehrawat, J. (Oral)

CM No. 9198-CII of 2017 :

This is an application for condonation of 560 days delay in filing the present appeal.

Notice of the application was issued on 8.5.2017 and reply thereof was filed on 18.7.2018 on behalf of respondent No.1.

The counsel for the appellant submits that delay has occurred due to lack of knowledge regarding the recovery rights, due to time consumed in getting a fresh certified copy of the award, as well as, due to lack of funds.

The counsel for respondent No.1 submits that he has no objection if the application is allowed.

In view of the above, the present application is allowed. Delay of 560 days in filing the present appeal is condoned.

Main Case (O & M) :

This is an appeal filed by the owner and the driver questioning the award dated 3.7.2015, passed by the Motor Accident Claims Tribunal, Bathinda

(in short 'the Tribunal'), whereby while allowing the claim petition, the

Tribunal had awarded an amount of Rs.9,78,000/- along with interest @ of 9% per annum in favour of the claimants. Besides this, the recovery rights have been granted in favour of the Insurance company.

The short point argued by the counsel for the appellant is that while deciding Issues No.3, 4, 5 and 6, the Tribunal has not appreciated the evidence on file in proper manner and have routinely returned the finding against the respondents, which includes the present appellants, as well as, the respondent-Insurance company. The Tribunal should have recorded categorical findings on the basis of the evidence led on file, if it was to grant recovery rights to the Insurance company.

The counsel for the Insurance Company has also not been able to rebut the argument of the counsel for the appellants in view of the nature and manner of finding recorded by the Tribunal on Issues No.3, 4, 5 and 6.

Having heard learned counsel for the parties, this Court finds substance in the arguments of the counsel for the appellants. When the issue before the Tribunal was qua the recovery rights of the Insurance company, then the specific evidence led on file should have been appreciated to determine the inter se rights of the present appellants (the driver and the owner) on the one hand, and the Insurance company on the other hand. However, this adjudication is missing in the award as such. Hence, the matter deserves to be reconsidered by the Tribunal qua this aspect.

However, qua the claimants, this Court does not find any substance in the appeal filed by the appellants. The claim of the claimants qua further enhancement shall be considered by this Court in the connected FAO

No. 7781 of 2015, which is stated to be pending adjudication before this Court.

Accordingly, while the appeal is dismissed qua the claimants, the matter is remanded to the Tribunal for reconsideration qua the inter se rights of the driver and the owner on the one hand, and the Insurance company on the other hand. The Tribunal is directed to appreciate the evidence on file and to record the finding after due appreciation only. Further, if either the present appellant or the respondent-Insurance company intend to lead any other evidence, only qua this aspect, then the same shall also be permitted by the Tribunal. Accordingly, after granting opportunities to the respective parties and hearing them, the Tribunal shall decide the issue in question.

For this purpose, the parties shall appear before the Tribunal on 24.3.2021.

Disposed of in the above terms.

(RAJBIR SEHRAWAT)
JUDGE

11.2.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No