

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

**FAO-1670-2020 (O&M)
Reserved on : 21.11.2022
Date of Decision : 08.12.2022**

Krishan Chand & Anr.

....Appellants

VERSUS

Jaswinder Kaur & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Kapila, Advocate for the appellants.

ALKA SARIN, J.

CM-5079-CII-2020

This is an application for condonation of delay of 06 days in filing the appeal.

For the reasons stated in the application, delay of 06 days in filing the appeal is condoned.

CM stands disposed off.

FAO-1670-2020

The present appeal against the award dated 21.10.2019 has been preferred by the owner and the driver of the offending truck bearing registration No.HP-66-1878.

The brief facts relevant to the present *lis* are that early in morning on 01.01.2017 Prem Singh (deceased) along with his wife, Jaswinder Kaur, and sons, Manpreet Saini and Pardeep Singh Saini, and nephew, Deepak, were coming in a Maruti car bearing registration No.PB-08-AC-4520 from Baba Balak Nath Mandir, District Hamirpur to Hoshiarpur after paying obeisance. The car was being driven by Prem Singh

at a slow speed and on the correct side of the road as the weather was foggy. At about 06:30 AM, when the car crossed Badsar and reached near Hariyal Galu Sharma Dhaba, the offending truck bearing registration No.HP-66-1878 was parked on the side of the road without switching on parking lights and without encircling the same with bushes. As per the averments made in the claim petition, the driver moved the truck to go ahead but immediately applied the brakes as a result of which the Maruti car struck against the truck. All the occupants of the car sustained injuries, however, Prem Singh succumbed to his injuries. FIR bearing No.0001 dated 01.01.2017 was registered at Police Station Badsar, District Hamirpur. It was claimed in the claim petition that the deceased was 44 years of age and was doing the work of auto repair on GT Road, Aslamabad (Hoshiarpur) and he used to earn about Rs.30,000/- per month. The claim petition was contested though it was admitted that FIR No.0001 dated 01.01.2017 under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 had been registered. It was averred by the driver and the owner that the driver of the truck reached Hariyal Galu Sharma Dhaba where he parked his truck on the left side of the road and on the next morning at about 6:30 AM he was standing near his vehicle and he found the car bearing registration No.PB-08-AC-4520 had come from Badsar side at a high speed and struck the truck from the back due to which the passengers of the car received injuries.

On the basis of the pleadings, the following issues were framed by the Tribunal :

1. Whether death of Prem Singh was caused on 1.1.2017 on account of rash and negligent driving of Krishan Chand ? OPA

2. Whether respondent No.1 Krishan Chand was not having valid and genuine driving license ? OPA
3. Whether claimants are entitled to compensation, if so, to what extent ? OPA
4. Relief.

The Tribunal held that it was a case of contributory negligence and, therefore, deducted an amount to the extent of 50% towards contributory negligence. The income of the deceased was assessed as Rs.9000/- per month i.e. the income of a skilled worker at the relevant time. On the basis of the pleadings and the evidence on the record, the Tribunal awarded an amount of Rs.8,26,000/- along with interest @ 7% per annum as compensation. Aggrieved by the said award, the present appeal has been filed.

Learned counsel for the appellants has contended that the car had struck the truck from the rear and, hence, it was a case of sheer negligence on the part of the Maruti car driver i.e. the deceased. It is further the contention that statement of RW1 - Krishan Chand - has been ignored who had deposed that the truck was parked on the side of the road and parking lights were on. It is further the contention of learned counsel that the deceased was a semi-skilled worker and hence the assessment of income @ Rs.9,000/- per month is on the higher side.

Heard.

In the present case it is undisputed that the truck was parked on the side of the road. The wife of the deceased as well as an eye-witness had deposed while appearing as AW1 and AW2 that the truck was parked on the side of the road which was half on the katcha road and half on the metalled

road. Both the witnesses were cross-examined at length and nothing could be elicited from the said witnesses. The driver of the truck who had appeared as RW1 though stated that he had parked the truck on the correct side of the road and parking lights were on, however, he admitted in his cross-examination that photographs were taken which would have been the best evidence to show that the truck was correctly parked which were, however, not produced. There is no reason forthcoming to disbelieve the statements of the two witnesses of the claimants. The area where the accident took place was a hilly area and the truck parked on the side of the road would create a hindrance. Keeping in view the totality of the circumstances, the argument raised by learned counsel cannot be accepted.

The second argument raised by learned counsel for the appellants that the income of the deceased has been assessed on the higher side cannot also be accepted inasmuch as a categorical statement was made by AW1 that her husband was repairing autos on GT Road, Aslamabad (Hoshiarpur). However, despite lengthy cross-examination, nothing could be elicited from her to discredit her statement.

In view of the above, I do not find any illegality or infirmity in the award passed by the Tribunal. The present appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

08.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO