

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 5063/2022 (O&M)

Date of decision:01.12.2022

Rajesh Kumar Chaudhary

.....Appellant

Vs.

Sahil Sharma and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Divya Godara, Advocate for the appellant/owner of the
Offending vehicle.

Nidhi Gupta, J.

CM No.16621-CII/2022.

The aforesaid application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 176 days in filing the appeal by the appellant/owner of the offending vehicle.

It is averred in the application that the appellant was not having financial resources to meet the expenses involved in the filing of the

appeal. It is further averred that he was not aware about the limitation period prescribed for filing of the appeal.

The application is supported by an affidavit dated 24.11.2022 of the appellant.

For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

FAO 5063/2022

Present appeal has been filed by the owner of the offending vehicle-Motorcycle bearing registration No. HR-05AY-9321- (hereinafter referred to as 'the offending vehicle') against the Award dated 31.1.2022 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') passed in MACT Case No. MACP/101/2019, whereby claimant/respondent no.1 has been awarded compensation of Rs.2,53,000/- along with interest @ 7% per annum after allowing his claim petition partly.

Brief facts of the case are that injured-claimant filed a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 30 lacs on account of injuries received by him including fracture of right elbow and right thigh received in an accident caused on 17.9.2019 due to rash and negligent driving of offending vehicle owned by appellant and driven by proforma respondent no.3.

The learned Tribunal after appraisal of the evidence and pleadings on record awarded compensation of Rs.2,53,500/- to the claimant respondent no.1. However, recovery rights were afforded to the insurance company as it was found by the Tribunal that there was violation of terms and conditions of the insurance policy inasmuch as the driver of the offending

vehicle was a minor and therefore, did not have a valid and effective driving license on the date of accident in question.

It is inter alia submitted by the learned counsel for the appellant-owner of the offending vehicle that the claimant was not entitled to the above said compensation on account of inter-alia, the following reasons: because firstly the accident had occurred on 17.9.2019 whereas the FIR was lodged after a delay of 6 days on 23.9.2018; and secondly after investigation, driver of the offending vehicle-respondent no.3 herein was also acquitted vide judgment dated 1.11.2019 (Ex. R-2). It was accordingly submitted that the claimant had failed to prove the very fact that the accident was caused by the offending vehicle and therefore, the appellant and driver could not be held liable to pay compensation. It is submitted that the delay of 6 days in lodging the FIR is unexplained and therefore, casts a shadow of doubt. It is further submitted that in view of the above facts, the Tribunal was in error in granting recovery rights to the Insurance Company against the appellant.

I have heard learned counsel for the appellant.

A perusal of the impugned Award shows that there is a categorical finding against the appellant/owner of the offending vehicle to the effect that appellant has violated the terms and conditions of the Insurance Policy in question as it has been proved on record that the respondent driver did not possess a valid and effective Driving Licence at the time of accident. It is not in dispute that during investigation, it was found that the date of birth of respondent No. 3/driver was 18.10.2002 and as such on the date of accident i.e. 17.9.2019 he was below 18 years of age. It is also not in dispute that respondent driver was produced before the Juvenile Justice Board, Karnal whereafter he was acquitted vide judgment dated 1.11.2019 (Ex.R-2).

Notwithstanding the acquittal, learned counsel for the appellant is unable to controvert the fact that on the date of accident the respondent driver was a minor and therefore, there was violation of terms and conditions of the Insurance Policy at the hands of appellant. Accordingly, I find no error in the impugned Award whereby recovery rights have been granted to the Insurance Company against the appellant.

No merit. Dismissed.

The appeal having been dismissed, CM 16622-CII/2022 seeking stay of execution proceedings initiated by Insurance Company, is rendered infructuous.

Ordered accordingly.

01.12.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No