

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
258 FAO-1610-2022 (O&M)

Date of decision: 04.05.2023

Seema Devi & Others

...Appellant(s)

Vs.

Noshad & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.S. Antal, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-4392-CII-2022

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 20 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the claimants against dismissal of their claim petition by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as "the learned Tribunal") vide Award dated 02.11.2021 passed in MAC Petition CIS No.145 of 31.03.2018 filed

under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). The three claimants are the widow and two major sons of deceased-Maya Ram.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that *“..it is not proved that death of Maya Ram has taken place by rash and negligent driving of offending vehicle by respondent no.1 on 17.2.2018.”* Learned Tribunal accordingly, dismissed the claim petition filed by the appellants herein.

3. Learned counsel for the appellants submits that learned Tribunal was in patent error in dismissing the claim petition of the appellants on the ground that the offending vehicle has been implanted by the owner of the truck No.HR-37C-8719 (hereinafter referred to as “the offending vehicle”). It is submitted that the said finding of the learned Tribunal is contrary to the evidence on record. It is stated that the said offending vehicle was involved in only one other accident and therefore, learned Tribunal is in error in law in not considering the facts of the case in right perspective. It is further submitted that the learned Tribunal has committed an illegality by not considering that FIR No.18 dated 17.02.2018 under Sections 279 and 304-A IPC was also registered against respondent No.1/driver of the offending vehicle No.HR-37C-8719.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.

6. Perusal of record of the case shows that in the present case, in holding that the claimants were unable to prove rash and negligent driving on part of respondent No.1/driver of the offending vehicle, learned Tribunal has returned the following findings:-

“18. The claimants are alleging that on 17.2.2018 respondent no. 1 has driven canter bearing registration no. HR 37C 8719 in a rash and negligent manner and hit it with the car of Maya Ram due to which he suffered injuries and later on died. The claimants in order to prove this fact have examined CW2 Krishan Lal an eye witness and have also proved on record copy of FIR Ex.C2, copy of post mortem report Ex.CI and copy of challan against respondent no.1 Ex.C3. It is also proved that respondent no.2 is owner of the offending vehicle and respondent no.3 is the insurer but from perusal of document Ex.R4 which is certified copy of judgment dated 1.10.2019 in FIR no.18 dated 17.2.2018 and per se admissible it is revealed that Krishan Lal an eye witness has not supported the version of the prosecution and even the copy of his statement made in the criminal trial is proved as Ex. R5 wherein Krishan Lal has deposed that no accident has taken place before him. He never nominated anyone to the police. His signatures were obtained by the police on blank papers. He failed to identify the accused i.e. respondent no.1 present in the Court. However, while appearing as CW2 in this claim petition, said Krishan Lal has deposed that on 17.2.2018 when Maya Ram was going ahead of him in car bearing registration no. HR 37 C 0476, the offending vehicle was being driven by respondent no.1 at a very high speed and in a rash and

negligent manner. He has seen the respondent no. 1 hitting the said canter with the car of Maya Ram from the back side due to which he (Maya Ram) suffered injuries and was taken to hospital where Maya Ram died. This evidence of CW2 Krishan Lal is contradictory to his statement given in criminal trial. Though the findings of Criminal Court are not binding upon the Motor Accident Claims Tribunal but even then a note of conduct of witness can be taken by this Tribunal.

19. Further, the important aspect of the case is that the offending vehicle bearing registration no. HR 37C 8719 which is owned by Jatinder Kumar respondent no.2 was also involved in another accident and a claim petition no. 31 dated 1.8.2015 was filed by Jaswinder Kaur and Manjinder Singh against present respondent no.2 Jatinder Kumar being owner of same vehicle before MACT, Patiala which was decided on 4.7.2016. The driver in the said case was named as Sahab Singh and copy of FIR with regard to said accident is Ex.R2. As per judgment dated 30.11.2016 Ex.R6 passed by learned JMIC, Patiala in FIR no.53 dated 28.5.2016 under Sections 279, 304-A IPC, P.S.Julkan, Sahib Singh driver of present respondent no.2 was got acquitted due to witnesses turning hostile against him during the trial. Further in another claim petition titled as Indu Sahni vs. Jatinder Kumar bearing MACP no. 32 dated 16.12.2016, decided on 9.12.2017 by MACT, Patiala also present respondent no.2 Jatinder Kumar was arrayed as respondent no.1 being owner of same very vehicle wherein name of driver was Daler Singh.

Copy of said claim petition is Ex.R3. The FIR with regard to said accident

was also registered and judgment dated 29.11.2018 passed by learned CJM, Sonipat in FIR no.200 dated 21.5.2016 under Sections 279, 304-A IPC, P.S. Murthal, Sonipat is also proved wherein Daler Singh driver of present respondent no.2 in the said accident was got acquitted as the witnesses against him also did not support the version of the prosecution case. Copy of said judgment is proved as Ex.R7.

20. So, from the entire these documents Ex.R1 to Ex.R7 it is proved that the claimants in connivance with police as well as respondents no.1 and 2 have impleaded respondent no.2 as owner of offending vehicle i.e. canter bearing registration no. HR 37 C 8719 and they have impleaded respondent no.1 as driver of said vehicle. The entire circumstances of the case are suspicious and it seems that a false FIR was got registered and a false claim petition is filed by claimants in order to grab compensation on account of death of Maya Ram.

21. So, keeping in view the entire evidence led by respondent no.2 on record it is not proved that death of Maya Ram has taken place by rash and negligent driving of offending vehicle by respondent no.1 on 17.2.2018. There are multiple implants of offending vehicle. The evidence of eye witness is contradictory to his evidence in criminal case against respondent no.1. Therefore, claimants are not entitled to receive the compensation from the respondents. Hence, these issues are decided against the claimants and in favour of respondents.”

7. From a perusal of the above findings it is clear that there is a material discrepancy/contradiction in the stand taken by

alleged eye-witness CW2 Krishan Lal in the stance he took before the criminal trial wherein he has denied the very occurrence of the accident in question, and before the tribunal where he has stated that respondent No.1 was driving rashly and negligently. It has further come on record that the present offending vehicle has been involved in two other accidents/subject matter of two other claim petitions.

8. Learned counsel for the appellants is unable to controvert or defend any of the above said findings. Learned counsel is also unable to give any explanation whatsoever in respect of the above said findings.

9. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

04.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No