

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2232/2020(O&M)

Date of decision: 15.05.2023.

Sunita and others

.....Appellants

Vs.

Janwar Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Bishnoi, Advocate for the appellants.

Nidhi Gupta, J.**CM NO.8643-CII/2023.**

Prayer in this application under Order 41 Rule 19 read with Section 151 CPC is for restoration of main appeal which was dismissed for non-prosecution vide order dated 20.4.2023. The application is supported by affidavit of the counsel for the appellants.

For the reasons stated in the application, the same is allowed; order dated 20.4.2023 is recalled and the appeal is restored to its original number.

CM NO.6385-CII/2020

Prayer in this application under Section 5 of the Limitation Act is for condonation of delay of 68 days in filing the appeal. The application is supported by an affidavit of claimant/appellant no.1.

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

Main Appeal

Present appeal has been filed by the claimants against the impugned Award dated 9.9.2019 passed by Motor Accident Claims Tribunal, Hisar, (hereinafter referred to as 'the Tribunal'), whereby appellants' claim petition bearing MACP/266/2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), has been dismissed. The appellants had filed the above said claim petition to claim compensation of Rs. 50 lakhs on account of the death of Krishan Kumar. The four claimants are the widow, two minor children, and mother of the deceased-Krishan Kumar.

It was the pleaded case of the appellants that deceased Krishan Kumar died due to injuries suffered by him in a motor vehicular accident that took place on the intervening night of 26/27.5.2013 due to rash and negligent driving of Car bearing registration No. HR-22J-0478 (hereinafter referred to as 'the offending vehicle'). Pursuant to the accident FIR No.665 dated 27.5.2013 under Sections 279/304-A IPC was registered at PS City, Hisar.

It is submitted by the ld. counsel for the appellants that in the said FIR, respondent no.1, driver of the offending vehicle, was challaned and put to trial. It is submitted that therefore, the ld. Tribunal has dismissed the claim petition on frivolous grounds.

It is further submitted that the deceased was 45 years of age at the time of accident and earning Rs.50,000/- per month, however, ld. Tribunal has not awarded anything.

No other argument has been raised.

Heard ld. counsel.

Perusal of the record of the case reveals that no doubt, in pursuance to the accident in question, an FIR No.665 dated 27.5.2013 was registered, however, it was registered against unknown vehicle and unknown driver, on the basis of statement of Chhotu Ram, PW5, uncle of the deceased. As no information whatsoever, was forthcoming regarding any identity of the offending vehicle, accordingly, on 17.9.2013 'untraced' report Ex.R1 was also eventually submitted.

It is the case of the appellants that identity of the offending vehicle was revealed to them by one Pawan Kumar who came to PW6 Anoop Kumar who is brother of the deceased, and told him that he had witnessed the accident as, at the time of the accident in question, he was travelling in the offending car. It is only thereafter, that PW6 Anoop Kumar moved application dated 15.3.2016 (Ex.P-12) to SSP Hisar for taking action against respondent no.1/ driver of the offending vehicle. Said Pawan Kumar also appeared before the Tribunal as PW7 and tendered his affidavit Ex.PW7/A along with copy of his statement Ex.P13 to the same effect as above, that he had disclosed particulars of the offending vehicle and driver to Anoop, brother of the deceased.

Be that as it may, in my opinion, involvement of the alleged offending vehicle is not satisfactorily or sufficiently proven on record as there

are many loopholes in the story put forth by the claimants. Admittedly, FIR Ex.P3 was registered against unknown vehicle and unknown driver. Even untrace report Ex. R1 was filed on 17.9.2013. But, most importantly, there is no explanation as to why PW7 Pawan Kumar, alleged eyewitness, remained silent for so long for about three years after the accident. There is even no explanation as to why he chose to come forward after three years of the incident. It is also pertinent to note that application Ex. P12 before SSP Hisar was moved by PW6 brother of the deceased and not his widow. It can also not be ignored that it has been the consistent and categorical case of the respondents that they have been falsely implicated in the matter after three years.

In my considered opinion, all these undisputed facts not only cast a shadow of doubt on the story put forth by the claimants, but in actual fact, evidence collusion between the parties and rather show that the claim is not genuine and has been filed only to procure the compensation.

Moreover, the mere fact that the respondent No.1 is undergoing trial is not sufficient to establish his involvement in the accident in question, or to establish rash and negligent driving on his part. In this regard, reliance may be placed upon decision of this Court in **Geeta Devi v. Ravinder Kumar (P&H) : Law Finder Doc Id # 498336**, wherein it has been held that:

“Motor Vehicles Act, 1988, Section 166 - Accident - Claim Petition - Dismissal of - Eye witness made improvements in his version - Those witness who allegedly noted the number of offending truck were not examined - Mere facing of trial and making of no complaint by respondent no.1 is no ground to hold that the accident is an outcome of rash and negligent driving of dumper in question

in the absence of other evidence - No ground to interfere with the well-reasoned finding of learned tribunal - Finding of learned Tribunal affirmed - Appeal dismissed.”

No judgment to the contrary has been cited by learned Counsel for the appellants. Accordingly, for the reasons stated above, finding no merit in this appeal the same is hereby **dismissed**.

Pending application(s), if any, stand disposed of.

15.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No