

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHFAO 2892/2020(O&M)
Date of decision:18/04/2023

Sameer Sharma

.....Appellant

Vs.

Giyani Ram and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTAPresent:- Mr. Sandeep Verma, Advocate for the appellant.
Mr. RK Bashamboo, Advocate for the respondent.**Nidhi Gupta, J.****CM 8896-CII/2020**

Since there is delay of 696 days in filing the appeal, aforesaid application has been filed seeking condonation of said delay. The application is supported by an affidavit of appellant. Reply to said application has also been filed by the respondent Insurance Company.

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

CM 8900-CII/2020

Prayer in this application under Order 41 Rule 27 read with Section 151 CPC is for producing additional evidence on behalf of the appellant, in the form of Route Permit (Annexure A-1) and Fitness Certificate (Annexure A-2).

Reply to the said application has also been filed.

After hearing ld. counsel for the parties, the application is allowed and documents Annexures A-1 and A-2 are taken on record.

Main Appeal.

Present appeal has been filed by the owner of Bus bearing registration No. UP-11AT-1115 (offending vehicle) against Award dated 24.7.2018 passed by Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal'), in MACP/319/2018 filed u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Claimants therein are respondents 1 to 4 herein.

Ld. Counsel submits that vide impugned Award compensation of Rs.12,39,600/- alongwith interest @ 7% per annum from the date of filing of the claim petition till actual realization has been awarded. It is submitted that claimants are parents, major brother and minor sister of deceased Mintu. It is further submitted that vide impugned Award the ld. Tribunal has granted recovery rights to Insurance Company-respondent no.5 herein. It is stated that the ld. Tribunal had granted recovery rights on the ground that Route Permit and Fitness Certificate of the offending vehicle was not placed on record by the appellant. It is submitted that the ld. Tribunal has fixed liability on the appellant only on the oral assertion of the counsel for the Insurance Company and no witness or document has been produced to show that no permit was obtained by the appellant in respect of the offending vehicle. It is submitted that the appellant was proceeded ex-parte vide order dated 10.4.2018. It is stated that even as per Section 66 of the Act, the appellant had a valid permit as required in the case of a transport vehicle. It is submitted that as per Annexure A-1, permit of the offending vehicle shows that the appellant had

a valid route permit valid from 9.4.2016 to 17.4.2016. It is submitted that as per Annexure A-2, certificate of fitness of offending vehicle shows that the same was valid from 3.2.2015 to 3.2.2017. It is submitted that therefore, the very ground on which the ld. Tribunal has granted the recovery rights against the appellant did not exist.

In response, it is submitted by the ld. counsel for the Insurance Company that no doubt perusal of Annexure A1 and A2 shows that the appellant possessed a valid Route Permit as also Certificate of Fitness on the date of accident. It is submitted that in view of these facts, admittedly, recovery rights should not be granted. Ld. counsel further submits that appellant ought to have appeared before the Tribunal and led the evidence and appropriate costs be imposed upon the appellant.

Heard ld. counsel for the parties.

In view of the admitted position as noted above, impugned Award is set aside to the extent that recovery rights have been granted to respondent no.5-Insurance Company against the appellant. However, it is directed that the appellant shall pay Rs.20,000/- (Rupees twenty thousand only) as costs to the respondent Insurance Company.

Disposed of as above.

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

18/04/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No