

FAO 5515/2016(O&M)
2023:PHHC:037617

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 5515/2016 (O&M)

Date of decision:02/03/2023

Satya Wanti and another

.....Appellant

Vs.

Krishan Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Anil K. Sokal, Advocate for
 Mr. Vaibhav Jain, Advocate for the appellant.

Nidhi Gupta, J.

CM 18979-CII/2016

Since there is delay of 513 days in re-filing the appeal, aforesaid application has been filed seeking condonation of said delay. Reasons cited in the said application are vague and do not constitute sufficient cause for condonation of such extraordinary and inordinate delay of 513 days. Application is accordingly, dismissed.

CM 18980-CII/2016

Since there is delay of 08 days in filing the appeal, aforesaid application has been filed seeking condonation of delay in filing the appeal.

Main Appeal.

This appeal is of the year 2016 in which notice has not yet been issued.

A perusal of the order sheet reveals that on 2.8.2017 there was no representation on behalf of the appellant and the case was adjourned to 23.2.2018. Again on 12.7.2018 since no one was present, the case was adjourned to 10.1.2019; when again, as there was no representation on behalf of the appellants, the appeal was dismissed in default vide order dated 10.1.2019. Thereafter CM 3801-CII/2019 seeking restoration of the appeal was filed. Even in the said CM, as no one appeared on 29.3.2019, the application was adjourned to 20.8.2019. On 19.10.2019, again no one appeared on behalf of the applicant-appellant, and the said CM was adjourned to 21.11.2019 subject to payment of costs of Rs.2000/- to be deposited in the High Court Lawyers' Welfare Fund. Vide order dated 20.12.2019 the application was allowed and appeal restored to its original number and ordered to be listed as per roster. On 21.12.2022 appellant remained unrepresented, and appeal was adjourned to today i.e. 2.3.2023. Even today, there is request for adjournment, however, this Court declines the said request.

Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.41,250/- granted by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 1.9.2014 in a petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') on account of damage caused to the property of the appellant.

Ld. Tribunal on the basis of pleading and evidence before it held that the shop of the claimant/appellant was damaged on 7.3.2012 due to rash and negligent driving of bus bearing Registration No. HR-39A/8119

(hereinafter referred to as 'the offending vehicle') by respondent no.1, owned by respondent no.2, and insured by respondent no.3 herein.

Ld. Counsel seeks enhancement of compensation on the ground that the shop of the claimant was damaged beyond repair and had to be reconstructed. It is submitted that as evident from testimony of PW1 Charan Singh, and receipts Ex.P4 to Ex.P9, it is clear that Rs.4,38,504/- was spent on repair of the wall. It is submitted that however, ld. Tribunal has not considered this aspect of the matter. It is further submitted that ld. Tribunal has also not considered the testimony of PW3 Raj Kumar Jaglan, Building Expert who had submitted his report Ex. P-15 which certified that the shop of the appellant had been fully demolished/damaged and was reconstructed and therefore, report Ex.P-15 ought to have been considered.

No other argument has been advanced by the ld. Counsel for the appellant.

Heard ld. Counsel.

Perusal of the record of the case shows that PW1 Charan Singh deposed that he had broken down the damaged shop of the claimant and reconstructed the same and issued receipts Ex. P4 to P9 worth Rs.4,38,504/-. However, in his cross-examination the said witness stated that he was not an authorized Contractor from any Government agency, and had not maintained any register regarding receipt of payment or any record regarding the labour engaged by him to do the work. Though it was stated by PW1 that he had got the P.O.P. work done from one Hari Shankar and had paid full amount of P.O.P. to said Hari Shankar, however, no record of the

said payment was maintained by him. In his cross-examination he further admitted that he did not obtain any expert opinion.

In my view, in the absence of any record of the work purported to have been undertaken by the said Contractor/PW1 no weightage cannot be given to the receipts produced by him. Further, PW3 Raj Kumar Jaglan, Building Expert had also admitted in his cross-examination that report Ex.P15 could be sustained only if the shop in question had been totally demolished and reconstructed from scratch whereas, in the present case admittedly, the shop of claimant/appellant had only been repaired. It has further come on record that as per Ex.RW1/A which is duly sworn affidavit of one IB Mehta, who had deposed therein that he had visited the damaged shop on 25.4.2014 and as per his report net loss caused to the shop of appellant was Rs.41,250/- From the above facts it is borne out that the appellant's shop was not neither completely demolished nor built from scratch and only repair work was done. Moreover, perusal of photograph at Ex.R1 produced on file by the respondents, which were duly admitted by the appellant, shows that only some loss was caused to the front portion of the shop which was got repaired. Even other photographs produced on record reveal that some loss was caused to the building and it is not that the entire building had collapsed due to the accident in question. Said evidence has not been controverted by the appellant either before the Id. Tribunal or before this Court.

Accordingly finding no merit in this appeal the same is dismissed on merits, as well as on grounds of delay.

02/03/2023

Joshi

RAJINDER PARSHAD JOSHI
2023.03.10 11:51
I attest to the accuracy and
integrity of this document

(Nidhi Gupta)
Judge

Whether speaking/reasoned Whether reportable	Yes Yes/No
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