

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**102****FAO-6178-2016(O&M)****Date of order: 17.11.2023****Om Parkash (now deceased) through LRs****.....Appellant(s)****Vs.****Naveen & Others****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Geeta Singhal, Advocate
for the appellant.

Nidhi Gupta, J.**CM-20551-CII-2023**

This is an application under Section 5 of Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 169 days in filing the application of restoration.

After going through the contents of the application, which is supported by affidavit of the applicant-appellant, the same is allowed subject to all just exceptions.

CM-20552-CII-2023

This is an application under Order 41 Rule 19 read with Section 151 CPC for restoration of present case i.e. FAO-6178-2016 to its original number, which was dismissed for non-prosecution.

After going through the contents of the application, which is supported by affidavit of the applicant-appellant, the same is allowed subject to all just exceptions. Present case i.e. FAO-6178-2016 is restored to its original number and is taken on board today itself.

MAIN CASE

With the consent of learned counsel for the appellant, the present appeal is taken up for hearing today itself.

Present appeal has been filed by the injured-claimant seeking setting aside of the Award dated 05.01.2016 passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the learned Tribunal'), in claim petition bearing MACT Case No.38 of 2014 filed by the appellant herein under Section 166 of the Motor Vehicles Act, was dismissed primarily on the ground that the appellant-claimant was unable to prove and had failed to establish rash and negligent driving of the alleged offending vehicle by respondent No.1.

2. Brief facts of the case as set out by the appellant are that on 10.08.2014 at about 3 PM, the appellant was going from his village to Rohtak in jeep of Bansi s/o Ram Kishan and when they reached in the area of village Garnawathi near Water Diggi, a tractor being driven by its driver/respondent No.1 rashly, negligently and at a fast speed suddenly came from the fields and struck into the jeep as a result of which the appellant received injuries and was taken to PGIMS, Rohtak and then was taken to Sun Flag Hospital where he remained admitted.

3. Learned counsel for the appellant submits that the learned Tribunal has wrongly and erroneously rejected the claim of the appellant by holding that the offending vehicle and/or identity of driver of the said offending vehicle was not established on record. It is submitted that in this regard the learned Tribunal failed to appreciate that the

eyewitness PW4 namely Bansi/driver of the jeep in which the appellant was riding, had categorically deposed that number of the tractor was noted as HR-14B-4550. It is stated that therefore, in view of this categorical deposition, the learned Tribunal was in patent error in holding that the offending vehicle had not been identified.

4. Learned counsel further submits that the appellant had suffered numerous grievous injuries on his person in the accident in question which had taken place due to rashness and negligence of respondent No.1 herein. However, learned Tribunal has ignored the evidence in this regard.

5. Learned counsel further argues that one of the main grounds on which the learned Tribunal has dismissed the appellant's claim petition is that there was a delay of 25 days in lodging the FIR. It is submitted that the learned Tribunal failed to appreciate that at the time of accident, the appellant was not in a fit state either mentally or physically to be able to register the FIR; and at the said time, the priority of the appellant as well as his family members was to save the life of the appellant. It is contended that accordingly, the delay occasioned on account of the above said reasons could not have been held to be a ground to dismiss the claim petition.

6. Learned counsel further submits that pursuant to the registration of the FIR No.231 dated 04.09.2014 under Sections 279, 337 and 338 IPC at Police Station Kalanaur, Rohtak, the police had conducted investigation whereafter charge sheet dated 13.01.2015 (Annexure A3) was

filed against respondent No.1. It is submitted that accordingly, involvement of respondent No.1 and of the offending vehicle in the accident in question is duly established on record and therefore, the impugned Award deserves to be set aside.

7. No other argument is raised on behalf of the appellant.

8. I have heard learned counsel.

9. I find no merit in the arguments raised on behalf of the appellant.

10. Perusal of record of the case shows that at the time of incident on 10.08.2014, the appellant was going in a jeep which was being driven by eyewitness/PW4 Banshi s/o Ram Kishan. As per evidence by way of affidavit dated 15.10.2015 (Annexure A1) filed by said Banshi (PW4), it has been stated that “...No. of tractor was noted as HR.14B.4550”; and further stated that there were other occupants in the jeep along with the appellant. In his cross examination dated 15.10.2015 as PW4 Banshi has admitted that “..There are five persons alongwith me in the jeep which have sit in the way. I do not tell the names of all those persons and I do not know all the persons sitting in the jeep. Om Parkash is neighbourer to my house.....I do not recognize the driver of the tractor. I do not remember about the colour of the tractor. I do not go register the FIR....I do not remember when the number of the tractor was told to the police...”.

11. From the above evidence it is clear that despite being an eyewitness to the accident and knowing the number of the offending tractor, FIR was not registered immediately either by PW4 Banshi, or by any

of the other five persons/eyewitnesses who were stated to have been riding in the jeep at the said time. There is no explanation whatsoever available on record as to why there was a delay of 25 days in registering the FIR, especially in view of the above admitted fact that there were six eyewitnesses available to the accident in question. It is but trite to suggest that even if the appellant himself was not in any condition to register the FIR, surely numerous eyewitnesses to the said incident could have made a complaint/registered an FIR especially in view of the alleged serious injuries received by the appellant. Thus, the story put forth by the appellant, belies belief.

12. Furthermore, though it has been argued that the identity of the driver as also that of the offending vehicle had been established, however, there are glaring discrepancies which have not been explained by the appellant. In this regard reference may be made to the evidence by way of affidavit dated 21.09.2015 (Annexure A2) of the appellant himself in which he has stated that “..No. of tractor was noted as HR.15B.4550,”; whereas, PW4 Bansi had stated that “..No. of tractor was noted as HR.14B.4550,”. Thus, there is a clear-cut contradiction in the number of the tractor as given by the appellant and the eyewitness.

13. Admittedly, the FIR was registered 25 days later by the grandson of the appellant. No doubt, number of the offending vehicle and name of the driver had been mentioned in the FIR, but there is no evidence on record to show as to how this information came to the knowledge and possession of the complainant-grandson. It is also to be noted that the

complainant/grandson of the appellant who had lodged the FIR, has not been examined; neither is there anything on record to show as to how the grandson of the appellant who was not even an eyewitness to the incident, came to know the number of the alleged offending vehicle.

14. Moreover, at the time of accident, the appellant was 70-72 years old. As per cross-examination of the appellant as PW2, he has admitted as follows:-

"I am retired from the Canal Deptt. I was retired from the service on 12.5.2000. My date of birth is 12.5.1940. I have not taken any reimbursement amount from any department on account the alleged injuries accident. Pensioner can get the reimbursement form the office/deptt. I have not submitted my document to my office for reimbursement. So I have not received the amount on account of reimbursement. There is a facility of reimbursement of medicines bills and expenses in my deptt. after retirement but I am not availed. I have not lodged the FIR. FIR is delayed of about 25 days. The driver of jeep is of my village. I do not know whether the driver of the jeep was holding driving licence or not. Six and seven passenger were traveling at the time of alleged accident..".

15. It is a clearly established position in law that where the claimant is entitled to reimbursement from the employer, he is not entitled to compensation under the Act. Moreover, in his cross-examination, the appellant has further admitted that he was getting pension of Rs.7,000/-, and his wife had already expired. It has further come on record that though the appellant has produced bills however, no medical prescription by any doctor has been placed on record on basis of which the said medicines were bought.

16. As regards argument on behalf of the appellant that as criminal proceedings had been initiated against respondent No.1, therefore, rash and negligent driving of the alleged offending vehicle by him stands, proved, I find no merit in the said argument as Hon'ble Supreme Court in **'MAGMA HDI General Insurance Co. Ltd. Vs. Nirmala Devi, (Punjab And Haryana) : Law Finder Doc Id # 1179732'**, has held as follows:

"8. In the considered view of this Court, the Tribunal while passing the impugned award has rightfully held that the judgment of a criminal Court determining the guilt or innocence of a driver is neither conclusive nor binding on the Tribunal dealing with a claim petition. It is by now well settled that while adjudicating claim petitions regarding motor accident claims, the principle that is to be followed is preponderance of evidence. The standards of proof of a criminal case are different from claims set up for accident victims and the Tribunal while considering the issue of negligence adduced before it has to proceed un-influenced by the fact of pendency of a criminal case or judgment of acquittal given by the criminal Court."

(Emphasis added.)

17. Again in case of **'Smt. Dharma Devi Vs. Jitender, (Punjab And Haryana) : Law Finder Doc Id # 817067'**, this Court has held that:

"11. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, though undoubtedly, negligence of a driver of a vehicle stated to be involved in a motor vehicle accident, is not to be proved in a claim petition filed under Section 166 of the Motor Vehicles Act, in the same manner as the guilt of the driver has to be proved in a criminal trial,

however, I find myself unable to agree with learned counsel for the appellant, inasmuch as, simply because a report under Section 173 Cr. P.C. was presented by the police to the competent court and respondent no. 1 was facing a trial with a charge sheet drawn up against him, it would not establish his negligence even for the purpose of summary proceedings before a Motor Accidents Claims Tribunal.”

18. It is also pertinent that during the pendency of this appeal, the appellant himself has expired and this present appeal is now being pursued by his LRs.
19. In view of the above factual and legal position, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.
20. Pending application(s) if any also stand(s) disposed of.

17.11.2023	(Nidhi Gupta)
Sunena	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No