

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-6345-2016 (O&M)
Date of decision: 01.02.2023

Umakant

...Appellant(s)

Vs.

Subhash Chand & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Navneet Singh, Advocate for
Mr. Pravindra Singh Chauhan, Advocate for the appellant.

NIDHI GUPTA, J.

CM-21259-CII-2016

This is an application under Section 151 CPC praying for exemption from filing true typed copy of impugned Award dated 28.10.2014 passed by learned Motor Accident Claims Tribunal, Karnal.

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

CM-21260-CII-2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 549 days in filing the present appeal.

The only reason cited by learned counsel for the appellant for seeking condonation of delay is that the appellant had no knowledge that impugned Award had been passed on 28.10.2014. No other reason is given in the application seeking condonation of such extraordinary and inordinate delay of 549 days. Even no detail as to when the

appellant got knowledge of passing of the impugned Award has been given. As per established legal position, appellant is required to explain delay of each day.

As such, application for condonation of delay stands dismissed.

MAIN CASE

Present appeal has been filed by the injured-claimant against dismissal of his claim petition vide Award dated 28.10.2014 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as “the learned Tribunal”) in claim petition bearing No.MACT-89/2012 filed under Section 163-A of the Motor Vehicles Act, 1988.

It was the pleaded case of the claimant before the learned Tribunal, that on 28.01.2011, he was travelling with his brother-in-law Subhash Chand and some other persons, in their Maruti car bearing registration No.DL-3CZ-3540. Said Maruti car bearing registration No.DL-3CZ-3540 was being driven by Subhash Chand, brother-in-law of the appellant when, respondent No.1, who was driving Santro car bearing registration No.HR-08H-3641 (hereinafter referred to as “the offending vehicle”) behind the Maruti car of the claimant, struck into the claimant’s car from behind as a result of which the claimant sustained multiple and grievous injuries on vital parts of his body.

It is also the pleaded case of the claimant before the learned Tribunal, as well as before this Court in the Grounds of Appeal, that a cow suddenly came in front of the Maruti car in which he was travelling, as a

result of which Subhash Chand brother-in-law, suddenly applied brakes of his car to save the cow, because of which the offending vehicle struck into Maruti car of the claimant from behind.

On the basis of pleadings and evidence led before it, the learned Tribunal concluded that accident had occurred all of a sudden without there being fault of anybody. However, as the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, only involvement of offending vehicle was required to be proved without establishing negligence of driver of the offending vehicle. Accordingly, learned Tribunal held that *“under Section 163-A of the Act, claimant is only required to prove involvement of motor vehicle in accident without there being any negligence on the part of driver of offending vehicle. From the aforesaid discussion, it is clear that claimant has duly discharged his burden of proving involvement of offending vehicle in the accident.”* However, claim petition of the appellant was dismissed on the ground that it was established on record that he was earning more than Rs.40,000/- per annum, and therefore, claim petition was not maintainable.

It is submitted by learned counsel for the appellant that at the time of accident, the appellant was 45 years old, and he is an agriculturist by profession and was earning Rs.3,300/- per month. However, now due to fracture of his left leg, he is permanently disabled and unable to sit, squat or walk properly and do any work and has become jobless. It is further the case of the claimant that he had spent Rs.2 lakh on his treatment and therefore, he claimed Rs.10 lakh as compensation along with interest at the

rate of 18% per annum. It is accordingly, submitted that the impugned Award be set aside and the claim petition of the appellant be allowed.

No other argument is raised on behalf of the appellant.

I have heard learned counsel for the appellant.

A perusal of the record of the case shows that in the claim petition filed by the claimant, it had been mentioned that he was earning Rs.3,300/- per month. However, in para 2 of his affidavit Exhibit PW1/A, he has deposed that he was earning Rs.5,500/- per month. He has further deposed in para 5 of the said affidavit that he had become permanently disabled due to the accident and had to engage two servants for doing agricultural work to whom he was paying Rs.5,000/- each per month. The appellant/claimant has further stated in his cross-examination that he owns 20 acres of agricultural land and rate of lease of land in his village is Rs.20,000/- per acre per annum.

On a specific Court query, learned counsel for the appellant is unable to dispute or controvert the above factual position.

As per law laid down by the Hon'ble Supreme Court in ***Deepal Girishbhai Soni Vs. United India Insurance Company Limited 2004 (2) RCR (Civil) 466 (SC)*** a claim petition under Section 163-A of the Motor Vehicles Act, 1988 can only be filed by a person whose annual income is less than Rs.40,000/-. From the above admitted facts, it is clear that the claimant was earning much more than Rs.40,000/- per annum. It has been laid down by the Hon'ble Supreme Court in ***Deepal Girishbhai Soni Vs. United India Insurance Company Limited (supra)*** that Section 163-A of the Motor

Vehicles Act, 1988 is a social security provision, providing for a distinct scheme, which is for the benefit of only such persons whose annual income is up to Rs.40,000/- per annum. It has further been held that all other claim petitions are required to be determined in terms of Chapter-XII of the Act.

Further, in his deposition as PW-1 according to the claimant, the accident had taken place without there being any fault on part of any person and this version was also corroborated by other eyewitnesses.

It has further been established on record by way of cross-examination of the claimant, that the Maruti car bearing registration No.DL-3CZ-3540, in which the claimant was driving along with some others, was not insured.

Accordingly, for the reasons stated hereinabove, I find no error in the impugned Award, and the present appeal stands dismissed on merits, as well as on grounds of delay.

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

01.02.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No