

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 5847/2017 (O&M)
Date of decision:17/01/2023

Ajmer Singh and others

.....Appellants

Vs.

Rattan Jain and another

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Raj Kapoor Malik, Advocate for the appellants.
 Ms.Vandana Mehak Khanga, Advocate for Insurance Co.

Nidhi Gupta, J.

CM 18993-CII/2017

Since there is delay of 116 days in filing the present appeal, aforesaid application has been filed seeking condonation of said delay. The application is supported by an affidavit of Appellant No.1-Ajmer Singh.

For the reasons stated in application, the application is allowed and delay of 116 days in filing the appeal is condoned.

Main Appeal

Present appeal has been filed against the dismissal of claim petition bearing MACT Case NO.75/2015 by learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal'), vide Award dated 18.8.2016 passed in a claim petition filed by the appellants under Section 166 of the Motor Vehicles Act.1988.

Claimants/ appellants are the parents, widow, and minor children of the deceased Jasmer who died in a motor vehicular accident that is stated to have taken place on 11.10.2014.

It is pleaded case of the appellants/claimants that on 11.10.2014 complainant Sunil Kumar was coming from Chandigarh to village Chausala. He reached at Kaithal at about 11.00 p.m. There was no conveyance to reach his village. So he requested his friend/ deceased Jasmer to reach at bus stand Kaithal. Accordingly, Jasmer reached at bus stand Kaithal and they both left for house of Jasmer on his motorcycle No. HR-08R-7638. When they reached near street No.2 Karnal Road, Kaithal at about 11.00/ 11.30 p.m. a white coloured Swift car No. HR-05X-2214 (offending vehicle) being driven by respondent no. 1 in a rash and negligent manner came from Karnal side and hit their motorcycle. Jasmer fell on metalled road whereas complainant fell on Kacha side. After accident, he became unconscious. He informed relatives of Jasmer.

It is submitted by the learned counsel for the appellants that the learned Tribunal was in patent error in dismissing the claim petition in view of the fact that from the record, it is clear that the accident had taken place due to rash and negligent driving of respondent no.1 (driver and owner of offending car bearing registration NO. HR-05X-2214).

It is submitted that an FIR was also lodged against respondent no.1 and that the claimants had spent Rs. 3 lacs on the treatment of deceased Jasmer and Rs.50,000/- on his funeral ceremony and therefore, claimed an amount of Rs.50 lacs as compensation.

Heard Ld. Counsel.

A perusal of the impugned Award shows that the learned Tribunal in paras 18 and 19 of the impugned Award has given the following findings:-

“18. According to petitioners, deceased had left his house on request of complainant Sunil as he was standing at bus stand because of non-availability of any conveyance to his village. When they were together on motorcycle they were hit by a car No. HR-05-X- 2214. Jasmer received a number of serious injuries but complainant did not sustain even an abrasion. It is unbelievable. Then he left the spot without telling anything to anybody. He may be in shock temporarily but he could have at least informed next day his parents/ family members. But he disappeared from the scene and suddenly surfaced on 14.10.2014 and made a statement. It does not inspire any confidence. Moreover, in affidavit he says he left Chandigarh on 11.10.2014, but in FIR he says he left Chandigarh on 12.10.2014. As per his statement to police, no accident took place on 11.10.2014.

19. It is also not clear who had shifted deceased to hospital. No effort was made to record his statement. There is no record on file to suggest that he was conscious when shifted to hospital. In such situation accident with this car is not proved. FIR has already been cancelled. It is true that this cannot be a ground to disbelieve petitioners. But, there has to be some evidence to connect this car with accident. But, there is not an iota of evidence. So question of rash and negligent driving by respondent No.1 does not arise. In cases relied upon by counsel for claimants accident was well proved but it is not established in this case.”

Ld. counsel for the appellants is unable to controvert the above findings of the Ld. Tribunal. Even nothing has been produced before this Court in support of the contentions made by the ld. Counsel.

In view of the above, I find no merit in this appeal, and the same is hereby dismissed.

17/01/2023
Joshi

(Nidhi Gupta)
Judge