

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230+114

FAO-3300-2018 (O&M)
Date of decision: 16.02.2023

Suman & Others

...Appellant(s)

Vs.

Amit Siwatch & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Pawan Sharma, Advocate for the appellants.

NIDHI GUPTA, J.

CM-12142-CII-2018

This is an application under Section 5 of the Limitation Act for condonation of delay of 21 days in filing the appeal.

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

CM-4824-CII-2020

This is an application under Section 151 CPC for granting permission to place on record certified copy of statement of PW10 suffered in case titled Raman Parihaar in FIR No.93 of 2013 under Sections 279, 337, 338 and 304-A IPC Police Station Parwanoo, District Solan (HP) as Annexure A2.

After going through the contents of the application, the same is allowed subject to all just exceptions and certified copy of statement of Amit-PW10 is taken on record.

MAIN CASE

Present appeal has been filed by the claimants against dismissal of their Claim Petition by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as “the learned Tribunal”) vide Award dated 25.08.2017 passed in MACT Case No.297 dated 25.08.2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). The claimants are the parents and sister of deceased-Parteek Kumar.

2. It is the pleaded case of the appellants in the claim petition that deceased-Parteek Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 14.10.2013 due to rash and negligent driving of Chevrolet Guzel T.Z. car bearing registration No.CH-01AM-6467 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1 herein.

3. Vide order dated 15.07.2016, the learned Tribunal framed following issues in the matter:-

“1. Whether accident dated 14.10.2013 causing death of Parteek Kumar had occurred due to rash and negligent driving of vehicle bearing registration No.CH01-AM-6467 by respondent No.1? OPP

2. If issue No.1 is decided in favour of the claimants, whether they are entitled for compensation, if so, how much and from whom? OPP

3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident? OPR4

Relief.”

4. Learned Tribunal on the basis of evidence and pleadings placed before it concluded that appellants/claimants had failed to prove

and satisfy the learned Tribunal as to in what manner the accident in question had taken place. Accordingly, learned Tribunal had decided issue No.1 against the claimants, and had dismissed their claim petition.

5. It is submitted by learned counsel for the appellants that it has been admitted by PW10/respondent No.1 herein, in his testimony, that in the photo (Exhibit D2) he was driving the offending vehicle. It is further submitted that photo (Exhibit D2) was taken at the time of accident. It is submitted that therefore, it is proven on record that accident in question was caused due to rash and negligent driving of respondent No.1 and therefore, learned Tribunal is in patent error in dismissing claim petition of the appellants.

6. It is further submitted that it has been admitted by PW10/respondent No.1 that he had sustained injuries in his jaw and his three ribs got fractured; whereas accused Ram Parihar/respondent No.2 herein had not sustained a single injury on his person. It is also the testimony of Investigating Officer in his cross examination that accused Ram Parihar was not having any injury on his person when he met him. It is submitted by learned counsel for the appellants that this fact also proves that the offending vehicle was being driven by respondent No.1 at the relevant time and therefore, learned Tribunal was in error in dismissing their claim petition.

7. No other argument is made on behalf of the appellants.

8. I have heard learned counsel for the appellants.

9. A perusal of the record of the case, in particular, judgment dated 12.09.2016, whereby respondent No.2 has been acquitted by Judicial Magistrate, 1st Class Kasauli, Solan (HP), shows that no doubt, it has been admitted by respondent No.1 as PW10 that in photograph (Exhibit D2) he can be seen driving the vehicle on the day of accident in question. However, it has further been clarified that he was driving the offending vehicle at about 12 noon, and not at the time of occurrence of accident which is at 7 pm.

10. Though, it is true that respondent No.2 was acquitted of charge of commission of offences punishable under Sections 279, 337, 338 and 304-A IPC and Sections 181 and 187 of the Act as case against him was not proved beyond reasonable shadow of doubt, however, admittedly, no finding was returned by the learned trial Court against respondent No.1 to the effect that he was driving offending vehicle at the time of accident.

11. Perusal of the record further shows that appellants had previously instituted another claim petition bearing No.14 of 2014 in which they had put forth a whole different case than the one pleaded in the present claim petition. In the earlier claim petition bearing No.14 of 2014, appellants had alleged that respondent No.2-Raman Parihar was driving the offending vehicle at the time of accident. However, subsequently, the appellants had withdrawn the said claim petition with liberty to file fresh claim petition as it was discovered that respondent No.2 was not possessing valid driving licence and, present claim petition was filed by the appellants, now alleging that it was respondent No.1 who was driving the offending vehicle at the time of accident.

12. Previous claim petition filed by appellants (Exhibit R1) shows that respondent No.1 was not impleaded as respondent in the said petition filed under Section 163 of the Act. It is therefore established on record that claimants/appellants had first instituted claim petition by asserting that it was respondent No.2 who was driving the offending vehicle; however, subsequently they changed their stand and filed present claim petition by stating that offending vehicle was being driven by respondent No.1 Amit Siwatch. It is clear that appellants have tried to improve their case only in order to procure compensation.

13. As regards argument of learned counsel for the appellants that respondent No.1 had suffered injuries on his person whereas respondent No.2 did not, a perusal of record shows that PW10 in his cross-examination has stated that respondent No.2 did not sustain any injury on his person due to opening of one air bag of the offending vehicle.

14. Learned counsel for the appellants is unable to deny, dispute, or explain these facts. Accordingly, present appeal stands dismissed.

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

16.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No