

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO 832/2017 (O&M)

Date of decision: 01.03.2023

Kaushalya Devi and others

.....Appellants.

Vs.

Jagdish and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rishabh Goyal, Advocate for
Mr. Deepak Girotra, Advocate for the appellants.

Nidhi Gupta, J.

CM 2585-CII/2017

1. Since there is delay of 151 days in filing the appeal, aforesaid application u/s 5 of the Limitation Act read with Section 151 CPC has been filed seeking condonation of said delay.

2. For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal.

3. Present appeal is of the year 2017, and notice has not yet been issued in the matter. Perusal of the order sheet shows that on 5.9.2017 present appeal was adjourned on request of Id. Counsel for the appellants. On the next date of hearing i.e. 28.1.2019 the Bar was abstaining from work and the case was adjourned to 6.8.2019; on 6.8.2019 no one appeared for the appellants; on the next date of hearing 13.2.2020, case was again adjourned on request of Id.

Counsel for the appellants for today. Even today, adjournment is being sought on behalf of counsel for the appellants however, keeping in view the above facts, this Court has declined the request for adjournment.

4. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.1.50 lacs granted by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide Award dated 30.4.2016 passed in Claim Petition No.49/2014 filed u/s 166 of the Motor Vehicles Act, 1988. Claimants sought compensation on account of damage to wall constructed at Khasra No.68//14/1/1/1 Min, 14/1/2/1, Min. 14/2/2/, 15/1/2, 15/2/1, 15/2/2/1 of Village Baniyani District Rohtak.

5. Ld. Tribunal on the basis of pleadings and evidence before it concluded that the accident, causing loss to the boundary wall took place due to rash and negligent driving of truck bearing registration No. HR-63-8096(hereinafter referred to as the 'offending vehicle') being driven by respondent no.1. Ld. Tribunal held the respondents jointly and severally liable to pay the compensation as above.

6. It is submitted by the ld. Counsel for the appellants that on 23.3.2014, the offending vehicle, loaded with crusher/stone sand, being driven by respondent no.1 came in the compound of godown/factory of the appellants to unload the said material. However, due to rash and negligent driving of the offending vehicle by respondent no.1, the truck struck against the newly constructed wall of the godown/factory building due to which the whole wall fell down causing immense loss to the appellants. It is submitted that a case in this regard was registered at Police Station Kalanaur, District Rohtak. It is submitted that the accident took place due to rash and high speed and negligent driving of respondent no.1, under the instructions and employment of

respondent no.2. As the offending vehicle was insured with respondent no.3 hence, the respondents were jointly and severally liable to pay compensation of Rs.8 lacs to the appellants along with interest @ 18% per annum.

7. In support of their contention, the appellants examined PW2 Prashant Khurana, Architect who inspected the factory and damaged boundary wall and submitted report of estimated loss of Rs.3,27,724/-. It is submitted that accordingly, the compensation awarded by the Id. Tribunal is on the lower side and deserves to be enhanced.

8. No other argument has been raised on behalf of the appellants.

9. Heard Id. Counsel for the appellants.

10. Perusal of the record of the case shows that above-said PW2 Prashant Khurana, Architect in his cross-examination has admitted that he was a Diploma Holder in Civil Engineering, and for valuation of estimated loss, Degree of Bachelor of Engineering is required which he did not possess. PW2 further admitted that Ex.P11 which is the Haryana PWD Schedule of Rates, 1988, on the basis of which he had submitted the estimated loss, is undated. He also admitted that he could not tell whether at the place of occurrence a new boundary wall is constructed or not. PW2 also admitted that there was no RCC Beam for support of the wall at the outer side of the building, rather was made of sand. PW2 could also not tell the length of damaged wall. PW2 denied the suggestion that bricks and concrete of broken wall could be used for reconstruction, and that he was not competent to assess the loss, or that he has prepared false report for the benefit of the appellants.

11. Besides the above uncontroverted facts, the record also bears out that though it was case of the appellants that length of the boundary wall was 328 feet, however, as per FIR Ex.P19 length of boundary wall is

mentioned by the appellants as 225 feet, and again PW3 Krishan Lal in his evidence, has stated that length of the boundary wall was 320 feet. Further, no bills were placed on record by the appellants to prove the alleged loss stated to have been suffered by them. Ld. Tribunal also found that the photographs Ex. P-2 to Ex. P-10, Expert Report Ex.P11 and copy of building Plan Ex. P-15 to P-18, did not sufficiently prove that the boundary wall measuring 328 feet was completely damaged in the accident in question. I am also in agreement with the observation of the Id. Tribunal that it belies belief that on one strike of the offending vehicle the whole boundary wall measuring 328 feet would be completely demolished, and that if it were so then obviously, the construction of the said boundary wall was of very poor quality.

12. In view of the above, I find the compensation of Rs.1.50 lacs as awarded by the Id. Tribunal to be adequate. Present appeal being devoid of merit is hereby, dismissed with costs of Rs.5000/- to be deposited by the appellants with the District Legal Services Authority, Rohtak within one month from today.

13. A copy of this order be sent to the Secretary, DLSA, Rohtak to ensure compliance. In case the appellants fail to deposit the costs so imposed, Secretary, DLSA, Rohtak will take appropriate steps to recover the same by way of arrears of land revenue.

14. Pending application(s),if any. stand disposed of.

(Nidhi Gupta)
Judge

01.03.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No