

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-7088-2018 (O&M)
Date of decision: 17.05.2023

Usha & Another

...Appellant(s)

Vs.

Suraj Kumar & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Surender Saini, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-26018-CII-2018

This is an application under Section 151 of Civil Procedure Code, 1908 seeking condonation of delay of 59 days in re-filing the appeal.

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

MAIN APPEAL

Present appeal has been filed by the claimants against dismissal of their claim petition by Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as "the learned Tribunal") vide Award dated 03.01.2018 passed in MACP/416/2016 filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants were the widow, minor son and mother of deceased-Rajender. Mother of the deceased has been arrayed as pro-forma respondent No.3 herein.

2. Claim petition was filed by the appellants on account of death of Rajender in a motor vehicular accident that took place on 20.03.2016 due to the alleged rash and negligent driving of motorcycle bearing registration No.DL-9SBD-5781 (hereinafter referred to as 'the alleged offending vehicle'), being owned by respondent No.1 and insured by respondent No.2 herein. Though, the learned Tribunal calculated the compensation payable to the claimants as Rs.4,03,000/- yet, held that as the claimants had failed to prove that the accident in question had occurred due to use of the alleged offending vehicle, accordingly, learned Tribunal had dismissed the appellants' claim petition.

3. Learned counsel for the appellants inter alia submits:

a) that learned Tribunal was in patent error in dismissing the appellants' claim petition as it is crystal clear that the accident in question had taken place due to the rash and negligent driving of the alleged offending vehicle which is owned by respondent No.1 herein;

b) that in petition under Section 163-A of the Act, only onus upon the claimants is to prove use of the vehicle and in the present case the claimants have proved that successfully. It is submitted that under Section 163-A of the Act, claimants are not required to establish rash and negligent driving.

4. No other argument is raised on behalf of the appellants.

5. I have heard learned counsel for the appellants.
6. Perusal of record of the case shows that in the accident in question that took place on 20.03.2016, two persons lost their lives. One is Rajender/present deceased who was driving motorcycle bearing registration No.HR-42-8211; and the other is Ankit, driver of the alleged offending vehicle. Sahil-PW2 was pillion-riding on Ankit's motorcycle. So, Sahil is the sole eyewitness of the accident.
7. It is the claimants' pleaded case that while the deceased was driving his motorcycle bearing registration No.HR-42-8211, he collided with the alleged offending vehicle being driven by Ankit, due to the impact of which collision, the deceased suffered multiple grievous injuries which proved to be fatal. It is also the claimants' own case that when the deceased had reached near village Sitawali, a car being driven at a fast speed came from the opposite direction and hit the motorcycle of deceased-Rajender. As a result of the impact of the said car, motorcycle of deceased Rajender then hit the alleged offending vehicle i.e. motorcycle being driven by Ankit. As a result of the collision, both, Rajender and Ankit fell down and sustained grievous injuries and subsequently died. On the basis of statement of eyewitness (PW2) Sahil, FIR (Exhibit P2) was registered. Even as per the FIR, the same sequence of events as noticed above, was recorded.
8. Findings in this regard are recorded in Para 15 of the impugned Award which is reproduced hereinbelow:-

“15. When the above said person, namely, Sahil appeared in the witness box as PW-2, he testified the same facts in his

examination-in-chief. However, the most significant fact to be noted is the description of accident deposed by PW-2 in his cross-examination. In his cross-examination, the PW-2 has deposed that the motorcycle of deceased was ahead of him at a distance of about 20 feet and the offending car came from opposite direction and hit the motorcycle. According to PW-2 after collision the motorcycle fell down and the persons riding on the same also fell down and that thereafter, the above said car hit their motorcycle and they, too, fell down. The PW-2 has also deposed that when both the motorcycles collided against each other there was no person on any of the motorcycles.”

9. From a perusal of the above facts, it is clear that the accident in question had not occurred due to the rash and negligence on part of Ankit/driver of the alleged offending vehicle. It is the claimants’ own case that a car had come from the opposite direction and hit into the motorcycle of the deceased from the impact of which the deceased fell on the road and sustained multiple grievous injuries which resulted in his death. Even the FIR (Exhibit P2) has been registered against unknown vehicle on the statement PW2-Sahil (eyewitness). Further, the fact that FIR was registered under Sections 279, 337 and 304-A of the IPC also evidences the fact that the accident had taken place due to the rash and negligent driving of the car and not out of use of the alleged offending vehicle by deceased-Ankit. Thus, no liability of respondent no. 1/ owner of the offending vehicle is made out.

10. In view of the above facts, I concur with the conclusion of the learned Tribunal that the claimants had failed to prove that the

accident in question had taken place out of use of the alleged offending vehicle i.e. motorcycle bearing registration No.DL-9SBD-5781.

11. Accordingly, I find no ground is made out to interfere in the impugned Award. Present appeal stands, **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

17.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No