

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
282
FAO-5349-2022 (O&M)
Date of decision: 10.05.2023

Smt. Suhsila Devi & Another
Vs.
Satbir Singh & Another
...Appellant(s)
...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vaibhav Jain, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-17909-CII-2022

This is an application under Section 151 CPC seeking
condonation of delay of 1208 days in re-filing the appeal.

No cogent reason has been cited to condone such
extraordinary and inordinate delay of 1208 days in re-filing the appeal.

Dismissed.

CM-17910-CII-2022

This is an application under Section 5 of Limitation Act,
1963 seeking condonation of delay of 39 days in filing the appeal.

No cogent reason has been cited to condone delay of
39 days in filing the appeal.

Dismissed.

MAIN APPEAL

Present appeal has been filed by the claimants/parents
of the deceased Niraj, against dismissal of their claim petition bearing

CIS No.45 of 2015 by Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as “the learned Tribunal”) vide Award dated 02.03.2017. The claimants had filed the above said claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) upon death of their son-Niraj aged about 24 years at the time of death.

2. Learned Tribunal dismissed the claim petition on the ground that the appellants were unable to prove that the accident in question took place out of use of motorcycle bearing registration No.HR-24J-0215.

3. It is submitted by learned counsel for the appellants that the learned Tribunal has failed to appreciate that the claim petition was under Section 163-A of the Act and therefore, the claimants were not required to prove the rash and negligent driving of the motorcycle in question, and had only to prove that the deceased had died in a roadside accident involving use of the motorcycle bearing registration No.HR-24J-0215.

4. It is submitted that the Id. Tribunal has failed to appreciate that statement made by E/ESI Krishan Lal (PW1) and Mahavir Singh father of deceased (PW2) coupled with the DDR Ex.P1 lodged with the police, duly proved that the accident in question took place by using motorcycle bearing Registration No.HR24J-0215.

5. It is further submitted that the learned Tribunal failed to appreciate that Kamal Singh was pillion rider on the said motorcycle

and he was eyewitness of the said accident and on his statement, DDR was also lodged. Merely on account of non-examination of Kamal Singh as witness, the claim petition was dismissed by the learned Tribunal which is totally wrong, illegal and arbitrary.

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

7. I have heard learned counsel for the appellants.

8. It is the pleaded case of the claimants before the learned Tribunal that on 29.11.2014 at about 10:30-11 pm, Niraj/deceased/son of the appellants herein, had left Sirsa for Delhi on a motorcycle bearing registration No.HR-24J-0215 along with Kamal Singh son of Satbir Singh/uncle of the deceased. Said motorcycle was being driven by Niraj/deceased on a moderate speed and correct side of the road and said Kamal Singh was pillion rider on the said motorcycle. At about 12:00 mid night, when the motorcycle reached 1.5 km away from village Dhangar, Tehsil and District Fatehabad towards Hisar side then due to light of oncoming vehicle from the opposite direction, Niraj lost his control over the motorcycle and the motorcycle struck into a pillar of stone near the road and both Niraj and Kamal Singh sustained injuries. Niraj and Kamal Singh were taken to General Hospital, Fatehabad in an ambulance where Niraj was declared dead by the doctor.

9. Contention on part of the appellants is that the accident had taken place arising out of the use of the above said motorcycle, and therefore, under Section 163-A of the Act, the

claimants are entitled to compensation. However, learned Tribunal has held that after discussion of oral as well as documentary evidence, the claimants failed to prove that the accident in question took place arising out of use of the above said motorcycle. Reasoning for holding this are recorded by the learned Tribunal in paras 11 and 12 of the impugned Award which are reproduced hereinbelow:-

“11. I find substance in the submissions made by learned counsel for the Insurance Company. No doubt, the present claim petition has been filed under Section 163-A of the M.V. Act and the petitioners are not supposed to prove the rash and negligent driving of vehicle in question by its driver but in order to succeed their case, the petitioners are duty bound to prove that Niraj died in a road side accident arising out of use of motor vehicle i.e. motor cycle in question. In this regard, petitioner Mahabir Singh, father of the deceased, stepped into the witness box as PW2 and tendered his duly sworn affidavit Ex.PW2/A wherein he has reiterated the averments as mentioned in the petition. During cross-examination, he has stated that **“I was not present at the time of alleged accident.”** PW1 E/ASI Krishan Lal has proved the copy of rapat No.19 dated 30.11.2014 as Ex.P1. During cross-examination, he has stated that **“Ex. P1 was not recorded by me.”**

12. The perusal of DDR Ex. P1 reveals that it was lodged by one Kamal Singh son of Satbir Singh who was accompanying the deceased Niraj at the time of alleged mishap but this witness was not examined by the petitioners for the obvious reasons. He was the most material witness who could have easily proved the case of the petitioners. On account of non-examination of above said witness Kamal Singh, an adverse inference is drawn against the petitioners under Section 114

(g) of the Evidence Act. Admittedly, Mahavir Singh (PW2) was not present at the time of alleged mishap and the person namely Kamal Singh who lodged the DDR has not been examined by the petitioners, therefore, the entire story of the petitioners regarding taking place of the alleged mishap becomes doubtful.”

10. Learned counsel for the appellants is unable to controvert that admittedly, only eyewitness to the accident in question Kamal Singh, was not examined by the claimants. Therefore, accident was clearly not proven in accordance with law. Thus, there is no reason whatsoever given by learned counsel for the appellants as to why the above said findings are incorrect.

11. Moreover, it has come on record that the deceased was driving the motorcycle in question for his personal use by borrowing it from respondent No.1. Thus, the deceased had stepped into the shoes of the owner of the motorcycle. Therefore, claimants could not be held entitled for compensation as, as per the established legal position, a person cannot be claimant as well as tortfeasor liable to pay the compensation. In this regard reliance can be placed upon judgment of Hon’ble Supreme Court in **Ningamma & Another Vs. United India Insurance Co. Ltd. Law Finder Doc ID # 197440**, **Asha Rani & Others Vs. Shiv Ram & Another Law Finder Doc ID # 342299** and **New India Assurance Co. Ltd. Vs. Sewa Singh & Others Law Finder Doc ID # 335162**.

12. No judgment to the contrary has been cited by learned counsel for the appellants.

13. In view of above discussion, I find no merit in the present appeal and the same stands **dismissed** on grounds of delay as well as on merit.

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

10.05.2023
Sunena

(Nidhi Gupta)
Judge

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