

FAO-690 of 2020 (O&M)

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

FAO-690 of 2020 (O&M)
Reserved on: 22.11.2023
Pronounced on: 14.12.2023

Ramesh

.....Appellant

Versus

Smt. Mita and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. J.S. Cooner, Advocate, for the appellant.
Ms. Pooja Arora, Advocate,
for Mr. S.S. Duhan, Advocate, for respondents No.1 and 2.
Mr. M.S. Jangu, Advocate,
for Mr. S.S. Kaushik, Advocate, for respondent No.3.
Mr. Vinod Chaudhri, Advocate, for respondent No.4.

NAMIT KUMAR, J.

CM-983-CII of 2020

1. This application has been filed by the applicant-appellant under Section 5 of the Limitation Act for condonation of delay of 218 days in filing the appeal.

2. Notice in the application was issued way back in the year 2020, however, no reply has been filed on behalf of the non-applicants. Learned counsel appearing for respondent No.4 has opposed the prayer made in the application for condonation of delay in filing the appeal.

3. Heard.

4. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 218 days in filing the appeal is condoned.

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1. Aggrieved against the award dated 24.01.2019 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'), appellant-owner of the offending vehicle has preferred present appeal.

2. Brief facts of the case are that respondents No.1 and 2-claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal, to claim compensation of Rs.30 lacs with interest @18% per annum on account of the death of their daughter Khushi, aged two and half years, in a motor vehicle accident, which allegedly took place on 11.03.2017, at about 06.30 pm at Chabri Colony, Jind, against appellant and others, regarding which, FIR No.73 dated 12.03.2017 under Sections 279 and 304-A IPC was registered at Police Station, Sadar Jind. It was pleaded that claimants are the parents of the deceased. It was Holy Festival on 11.03.2017. Accordingly, the deceased alongwith other children was playing in the street. Claimant No.1 was sitting at the gate of her home. At about 06:30 p.m., Respondent No.3 came on truck bearing registration No.HR-61-7746 from the side of Kacha Bypass, driving the same in a rash and negligent manner and struck the deceased. Claimant No.1 raised cries. Deceased Khushi was taken to the General Hospital, Jind where the doctors declared her 'brought dead'. The autopsy on the dead body was conducted. The accident took place on account of the rash and negligent driving of truck bearing registration No.HR-61-7746 by Respondent No.3.

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3. Appellant and respondent No.3, the owner and driver of the offending vehicle, in the written statement denied the case of the claimants. They alleged that respondent No.3 has been falsely implicated in the present case. The claim petition has been filed in collusion with the police. The compensation claimed is excessive. Accordingly, the claimants are not entitled for any compensation.

4. Respondent No.4 – Insurance Company, with which the alleged offending vehicle was insured in its written statement denied the case of the claimants and alleged that there has been violation of the terms and conditions of the insurance policy. Appellant and respondent No.3 have also committed breach of the terms and conditions of insurance policy. The compensation claimed is excessive. Accordingly, the petition be dismissed.

5. On the pleadings of the parties, following issues were framed:-

(1) Whether the accident in question was caused by respondent No.1 while driving Truck bearing registration No.HR-61- 7746 in a rash and negligent manner causing death of Khushi minor daughter of Budh Ram, as alleged? OPP.

(2) If issue no.1 is proved, whether the petitioners are entitled to any compensation, if so to what extent and from whom? OPP.

(3) Whether the respondents no.1 and 2 had violated any term and condition of the insurance policy? OPR-3

(4) Relief.

6. In support of their case, parties led oral as well as documentary evidence.

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7. The Tribunal after hearing learned counsel for the parties and appreciating the evidence on record, vide award dated 24.01.2019 allowed the claim petition and awarded compensation of Rs.3,50,000/- to the claimants with interest @ 7.5% per annum from the date of filing the petition till its actual realization. Respondent No.4-Insurance Company was held liable to pay the compensation, however, it was given right of recovery against the appellant. Hence, instant appeal.

8. Learned counsel for the appellant contended that the Tribunal erred in granting recovery rights to respondent No.4. Relying upon the judgment of this Court in ***Charanjit Singh and others v. Harish Kumar Sachdeva and others, 2018(4) R.C.R.(Civil) 993*** learned counsel contended that non-obtaining of a fitness certificate is not a ground on which the insurance company would be absolved of its liability.

9. On the other hand, learned counsel for respondent No.4-Insurance Company submitted that the Tribunal has rightly given recovery rights to the Insurance Company as at the relevant time appellant was not having fitness certificate of the offending vehicle and for plying a vehicle on the road fitness certificate is mandatory. He further submitted that appellant has filed application under Order 41 Rule 27 CPC for producing fitness certificate which is against the relevant provisions of law. Hence, present appeal is liable to be dismissed.

10. I have heard learned counsel for the parties and perused the record.

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11. This Court in the case of *Charanjit Singh* (supra) has held as under: -

“11. Counsel representing the insurer of the truck is not in a position to support findings of the Tribunal that non-production of fitness certificate either amounts to breach of terms and conditions of policy much less constituting a defence under Section 149(2) of the Act.

12. Section 149 of the Act deals with duty of the insurers to satisfy the judgments and awards against persons insured in respect of third party risks. Section 149(2) of the Act provides for the grounds on which an insurer to whom notice of bringing of proceedings before the Claims Tribunal is given can defend the action on any of the following grounds:-

“(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

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(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.”

13. Counsel for the insurer has failed to convince this Court as to how non-possession of a fitness certificate is covered within the purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149(2) of the Act. In absence of legislature providing non-possession of a fitness certificate to be a ground to defend action by the insurer, it is difficult to sustain findings of the Tribunal that the insurer is entitled to recovery right against the insured for his failure to produce the fitness certificate. That being so, findings recorded by the Tribunal giving recovery right in favour of the insurer are liable to be set aside and ordered accordingly.”

12. In view of the above, respondent No.4 – Insurance Company shall be liable to pay compensation to the claimants by way of indemnification of the insured in discharge of its obligation under the contract of insurance without any recovery right against the insured.

13. Appeal is allowed in the aforesaid terms.

14.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No