

**FAO-409-2007 (O&M)****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****FAO-409-2007(O&M)****Date of Decision: November 07, 2024**

Mahesh Kumar

.....Appellant

Vs.

Dharmender Kumar and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Vipul Jindal, Advocate
for the appellant.Mr. Sanawar Ali, Advocate for Mr. Manoj Tanwar, Advocate
for respondent No. 2Mr. Raj Kumar, Advocate
for respondent No. 3

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 24.07.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 whereby the claim petition filed before the learned Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal') was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 04.12.2004, the appellant who was employed as Mechanic in Mahindra and Mahindra Agency, Delhi Road Fideri, came out of the bathroom of the workshop and suddenly the driver of the Max Pick bearing registration No. HR-47-7131 drove his vehicle and the appellant got crushed in between the vehicle and the wall. He sustained grievous injuries due to rash and negligent driving of respondent No. 1.

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3. Upon notice of the claim petition, respondent Nos. 1 and 2 initially appeared but later on they were proceeded against ex parte.

4. Respondent No. 3 appeared and filed reply and denied the factum of accident/compensation.

5. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the petitioner Mahesh Kumar had sustained injuries in the motor vehicular accident, as caused by the respondent No.1 by driving the vehicle bearing registration no. HR-47-7131 in a rash and negligent manner as alleged? OPP

2. If issue no.1 is proved in affirmative, whether the petitioner is entitled to claim any compensation, if so, from whom and how much? OPP

3. Whether this petition is bad for mis-joinder and non- joinder of necessary parties? OPR3.

4. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of accident? OPR3.

5. Whether this claim petition is not maintainable in the present form in view of the preliminary objection No. 5 in the written statement of respondent No.3? OPR3.

6. Whether the offending vehicle in question was being used in violation of the terms and conditions of the insurance policy at the time of accident, if so its effect? OPR-3.

7. Relief.”

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition filed by the

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claimant/appellant. Hence the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

7. The learned counsel for the appellant-claimant contends that the claim petition was dismissed only on the ground that there was a delay of 22 days in registration of F.I.R. Since the claim petition of the appellant was dismissed and Issue No. 1 was decided against him, therefore, the income portion was never discussed in the claim petition and this case pertains to the burnt category of the year 2006-2007. Therefore, he prays that his case be dealt with under Section 163-A of the Motor Vehicles Act, 1988 because if the case is remanded to the Tribunal, it will cause further delay.

8. He further submitted that Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act.

9. He further submitted that the present case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others.**” wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) by relying upon the judgment of Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]** wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.

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10. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the claim petition has rightly been dismissed.

11. I have heard learned counsel for the parties and perused the whole record of this case.

12. So far as the delay of 22 days in lodging the FIR is concerned, Hon'ble Supreme Court has settled the law in the case of ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 693***, wherein it has been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.


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21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

13. This Court is now converting the present claim petition filed under Section 166 to Section 164 of the Motor Vehicle Act, keeping in view the beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

14. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death

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in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. *This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary."*

15. In view of the above, the present appeal is allowed and award dated 24.07.2016 is set aside. Accordingly, the claimant/appellant is held entitled to compensation to the tune of Rs. 2.5 lakhs under Section 164 of the Motor Vehicles Act.

16. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 **Supreme Court Cases 107**, the appellants-claimants are granted the interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

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17. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today. The appellant-claimant is directed to furnish his bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the bank account of the appellant-claimant.

18. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

November 07, 2024

G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes