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

**FAO No.8077 of 2014 (O&M)
Date of decision : 19.11.2024**

Jitender Kumar

Versus

....Appellant

Rakesh Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Karan Singh, Advocate
for the appellant.

Mr. Hardeep Singh Dhillon, Advocate for
Mr. Anish Gupta, Advocate
for respondents No.1 and 2.

Mr. Sanjeev Kodan, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

CM-21828-CII-2014

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 833 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 833 days in filing the instant appeal is hereby condoned.



CM-21827-CII-2014

This is an application filed under Section 151 CPC seeking condonation of delay of 24 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 24 days in re-filing the instant appeal is hereby condoned.

FAO No.8077 of 2014

1. Claimant is in appeal aggrieved of the award passed by the MACT, Gurgaon dated 19.11.2011.

1.2. Claimant filed petition under Section 163-A of the Motor Vehicles Act, 1988 seeking compensation on account of death of his deceased son Sonu claiming that on the fateful day i.e. 13.09.2010 deceased Sonu was riding motorcycle, returning to his house in village Rajpura. He was riding on the correct side of the road, at a moderate speed when offending vehicle i.e. jeep bearing registration No.HR-34-6788 hit him. Sonu suffered multiple injuries and died. FIR bearing No.184 dated 13.09.2010 got registered for offences punishable under Sections 279, 304-A IPC, at Police Station Pataudi against the driver of the offending vehicle i.e. respondent No.1. Deceased Sonu was 19 years of age and was earning Rs.3300/- per month.



2. Claim petition was contested by the respondents denying accident.

3. On the basis of the pleadings, following issues were framed:

- “1. Whether the accident in question has taken place on 13.09.2010 at about 2.20 PM, on near village Rajpura, PS Pataudi, Gurgaon, on account of rash and/or negligently driving of vehicle bearing no.HR-34-6788 driven by respondent no.1 resulting into death of Sonu Kumar?OPP
2. If issue no. 1 is proved, whether the petitioner is entitled to any amount of compensation, if so, how much and from whom?OPP
3. Whether respondent no.3 exonerated from liability, for the reasons indicated in the preliminary objections?OPR
4. Relief.”

4. While deciding issue No.1 though Tribunal held that evidence goes to show that the claimant proved negligence of respondents No.1 & 2 in causing accident however, decided issue No.1 against the claimant and in favour of the respondents holding that the claimant should have filed claim petition under Section 166 of the Motor Vehicles Act and not under the provisions of Section 163-A of the Motor Vehicles Act and dismissed the claim petition.

5. Ld. Counsel for the appellant while assailing the impugned judgment passed by the Tribunal submits that the Tribunal erred in being swayed away merely by the nomenclature of the petition. Once from evidence on record it stood proved that the respondents No.1 and 2 were responsible for the accident in which deceased Sonu lost his life, Tribunal



ought to have allowed the claim petition converting it to the one under Section 166 of the Motor Vehicles Act. He further submits that even if the petition is to be treated under Section 163-A of the Motor Vehicles Act, after the said provision stands substituted by Section 164 of the Motor Vehicles Act w.e.f. 01.04.2022 the claimant would be entitled for compensation of Rs.5.00 lacs and would be governed by the amended provision in view of ratio of law laid down by Supreme Court in the case of **Ram Murti and others vs. Punjab State Electricity Board, 2023 ACJ 631.**

6. Counsel representing respondents No.1 and 2 submits that Tribunal has rightly rejected the claim petition filed under Section 163-A of the Motor Vehicles Act after claimant failed to implead owner and insurer of the motor-cycle. The petition filed under Section 163-A cannot be allowed against owner and insurer of jeep as deceased was not occupant of the jeep which is *sine qua non* to maintain petition under Section 163-A of the Act.

7. Counsel representing respondent No.3/Insurance Company has supported the contentions raised by counsel representing respondents No.1 and 2 and contends that the Tribunal rightly rejected the claim petition filed by the claimant.

8. I have heard counsel for the parties and have carefully gone through records of the case.



9. It is a matter of record that the petition was filed under Section 163-A of the Motor Vehicles Act. It is also matter of record that the Tribunal after appreciating evidence on record observed as under:

“14. PW3 Dalip, gave an eye-account, submitted his affidavit Ex.PW3/A, in his examination-in-chief, and solemnly affirmed that on 13.09.2010, he alongwith his maternal uncle's son Babli were pasturing the goats, at around 2.15 PM, Sonu son of Jitender, was returning from Hailey 8 Mandi side, one Jeep bearing registration no: HR-34-6788, being driven by Rakesh Kumar, at a high speed in a rash and negligent manner and hit the motorcycle of Sonu and he sustained injuries and he succumbed to the injuries sustained in the accident. The accident has been caused due to rash and negligent driving of respondent no. 1.

15. It is pertinent to mention that this witness has deposed during his cross-examination, that police did not record his statement. He cannot tell the registration number of the motorcycle. He cannot say who informed to the police.

16. Keeping in view the evidence, here-in-before discussed above, go to show that the claimant has proved the negligence of respondents no. 1 & 2 in causing the accident, and as per deposition of PW1, Mukesh Kumar Ahlmad, who has brought the summoned record of case file titled as, 'State vs. Rakesh, arise out of FIR no. 184 dated 13.09.2010, under Sections 279/304-A IPC, P.S. Pataudi and charge have been framed against accused under Sections 279/304-A IPC and case is posted for prosecution evidence. This court is of the view, keeping in view of provision of Section 163-A sub Section-2,

"In any claim for compensation under sub-Section (1), the claimant shall not be required plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the



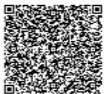
owner of the vehicles concerned or of any other person".

17. It is not the case of the claimants, that the accident has been caused due to use of and arise out of motorcycle bearing registration no. HR-14B-0647.

18. Apart from it, the claimant has not impleaded the owner and insurer of the aforesaid motorcycle no. HR-14B-0647, as parties in the instant claim petition. Meaning thereby, the claimant has not pleaded, that the accident in question has been caused due to arise out of use of the motorcycle in question.”

10. From above, it is evident that the Tribunal was satisfied that the negligence of respondents No.1 and 2 was a cause of accident and the same stood proved by deposition of eye-witness PW-3 and contents of FIR No.184 dated 13.09.2010.

11. In these circumstances, Tribunal ought to have treated the present petition to be the one under Section 166 of the Motor Vehicles Act, 1988 and not under Section 163-A of the Motor Vehicles Act, 1988. Motor Vehicles Act is a beneficiary legislation. Chapter XI has been enacted to take care of the liability of the driver and owner of the motor-vehicle towards third party. The damage suffered by third party ought not have been ignored merely for the reason that the petition was not filed under correct section. In view thereof, this Court finds that the findings recorded by the Tribunal on issue No.1 need to be modified to the extent that in view of overwhelming evidence on record regarding rash and negligent driving of respondent No.1, respondents No.1 to 3 are held to be liable jointly and



severally and the petition is treated to be the one under Section 166 of the Motor Vehicles Act, 1988.

12. It has come on record that the deceased was 19 years of age and was earning Rs.3,300/- per month. He was unmarried. Deduction of 1/2 needs to be applied. Keeping in view ratio of law laid down in ‘**National Insurance Company Limited vs. Pranay Sethi and others**’, (2017) 16 SCC 680, 40% future prospects need to be added. Multiplier of 18 needs to be applied. Appellant is also held entitled to a sum of Rs.48,000/- for loss of consortium. Rs.18,000/- is granted under the head of funeral expenses and Rs.18,000/- for loss of estate. Claimant is also entitled for interest @ 9% per annum for the period commencing from the date of filing of the claim petition till the date of actual realization.

13. Resultantly, instant appeal is allowed.

November 19, 2024

(Pankaj Jain)
Judge

Dpr

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