

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****228****FAO-2561-2021(O&M)****Date of decision: 23.04.2026****Sonu Kumar****...Appellant(s)****Vs.****Dhan Singh & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rajender Kumar, Advocate
for the appellants.

*********NIDHI GUPTA, J.****CM-11343-CII-2021**

This is an application under Order 41 Rule 27 CPC for adducing additional evidence by way of MLR of Ashif Khan as Annexure A1; and order dated 26.10.2018 passed by the Permanent Lok Adalat, Public Utility Services, Kurukshetra as Annexure A2.

It is inter alia submitted by learned counsel for the applicant that the applicant wants to adduce his evidence by way of tendering the MLR and order passed by Permanent Lok Adalat before this Court and therefore, the present application be allowed.

Heard.

It is the clear case of the applicant/appellant that the damage to his Ashok Leyland was caused by the offending vehicle in the presence of eyewitness Ashif Khan. Admittedly, said Ashif Khan has not been



examined by the appellant before the learned Tribunal. Now by way of additional evidence, the applicant wishes to produce the MLR of said Ashif Khan and the appellant himself before this Court as Annexure A1 collectively by way of additional evidence. There is no reason forthcoming from the application or by the applicant/appellant at the time of arguments as to why aforesaid documents were not produced by the appellant before the learned Tribunal.

For leading additional evidence before the Appellate Court, Order 41 Rule 27 (1) CPC, mandates as follows:

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—
(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed,
or
(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”



A perusal of the above provision shows that the scope of Order 41 Rule 27(1) of the CPC is very clear. No doubt, the provision enables the party to file additional evidence at the first and second appellate stages. However, Rule 27(1)(aa) stipulates that such additional evidence can be permitted only if the party requesting it must be able to prove that, despite their best efforts, they were unable to introduce the additional evidence in the initial proceeding. Thus, the basic principle for admitting additional evidence is that the party appealing is able to establish that there was a valid reason for not submitting such evidence at the trial stage. As noted above, in the present case, learned counsel for the applicant is unable to give any reason whatsoever as to why the said document was not produced by the applicant before the Id. Tribunal.

Hon'ble Supreme Court in **CA 16899 of 1996 "Karnataka Board of Wakf Vs. Government of India"** has held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence.

Reference may also be made to judgment of the Hon'ble Supreme Court in **C.A. No.10195 of 2013 titled as "Govt. of Karnataka and Another Vs. K.C. Subramanya & Others"** wherein Their Lordships have held as follows:-

"6.On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage,



but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.”

It is established legal position that provision of Order 41 Rule 27 CPC cannot be used to fill up lacuna in case. In this regard, reference may be made to pronouncement of Hon’ble Supreme Court in ***N. Kamalam (dead) and another Vs. Ayyasamy and Another (2001) 7 SCC 503***, wherein it is held:

“The provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the Court of Appeal – It does not authorize any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the Appellate Court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

From the above facts, it is clear that applicant has not exercised due diligence and cannot be permitted at this stage to improve his case or fill up lacunae in his case by leading additional evidence. It has been held to be against the spirit of the Code to allow a party to adduce additional evidence without the fulfillment of either of the three conditions contained in Rule 27.



Accordingly, the present application stands **dismissed**.

MAIN CASE

Present appeal has been filed by the claimant laying challenge to the Award dated 05.03.2020 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter 'the learned Tribunal') whereby MACT Petition No.89 dated 16.02.2017 filed by the appellant/claimant under Section 166 of Motor Vehicles Act (hereinafter "the Act"), has been dismissed.

2. The above-said Claim Petition was filed by the appellant claiming compensation on account of damage caused to his Ashok Leyland Dost Refresh bearing registration No.HR-45-B-6096. It was the case of the appellant that the above-said Ashok Leyland of the appellant had been damaged in a roadside accident dated 24.10.2016 due to the rash and negligent driving of Canter bearing registration No.DL-1LP-4248 being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3.

3. It was the pleaded case of the appellant before the learned Tribunal as recorded in Para 2 of the Award that:-

"2. Brief facts leading to the filing of this claim petition are that on 24.10.2016 one Duli Chand driver of claimant proceeded from Karnal Sabji Mandi after loading Nariyal in the aforesaid vehicle from Karnal to Ambala. The driver of said vehicle was during his vehicle observing all the traffic rules in a moderate speed and when they reached near Shere Punjab Dhaba



G.T.Road village Mohri, Duli Chand parked his vehicle on the service line as the said vehicle was became out of order, in the mean time, a Canter bearing registration no. DL-1LP-4248 came from Shahabad side driven by its driver in a rash and negligent manner firstly hit in the Scorpio bearing registration No.HR-26CS-2525 and thereafter hit in the Ashok Leyland Dost vehicle of claimant after coming on the wrong side. Resultantly, the vehicle of claimant totally damaged due to the said accident and occupant of the vehicle also sustained multiple and grievous injuries. This accident was caused due to sole negligence of respondent no.1. A case was got registered under Section 279, 336, 337 and 427 of IPC against respondent no.1 vide FIR no.552 dated 25.10.2016 in P.S.Shahabad. Thus prayed that an award of Rs. Ten lakh only as compensation plus costs and interest at the rate of 18% per annum till realization be passed in favour of the claimant.”

4. However, upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Tribunal has found that:-

“17. Consequently, this Tribunal is of the considered view that the claimant has failed to discharge the onus of proving factum of rash and negligent driving of Canter bearing registration No. DLILP-4248 by its driver respondent no.1 and this issue is not proved. Resultantly, issue no.1 is answered against the claimant.”

5. Learned counsel for the appellant inter alia submits that the Id. Tribunal has grievously erred in dismissing the claim petition. It is submitted that the appellant had duly demonstrated before the learned Tribunal that



immense damage was caused to the Ashok Leyland vehicle of the appellant by the respondent no.1 due to his rash and negligent driving of the offending vehicle. However, they said evidence has been overlooked by the Tribunal.

6. It is further submitted that the appellant/claimant has been non-suited on account of the fact that the appellant has not produced any bill regarding repair of the damaged vehicle. Rather, only produced the proposed estimate (Ex.P1) dated 08.01.2016. From the perusal of case file, it is revealed that neither any amount has been paid by the claimant in lieu of repair of vehicle in question nor any bill has been produced on the case file to this effect, but the learned Tribunal ignored the fact that the claimant has sent damaged vehicle in Rahul Pam Pvt. Ltd. authorized dealers of Ashoka Leyland Light Vehicle at Karnal for repair and Rahul Pam Pvt. Ltd. authorized dealers of Ashoka Leyland Light Vehicle at Karnal had also made the estimate of the damage vehicle which is Ex.P1.

7. The learned Tribunal has dismissed the Claim Petition of the claimant/appellant on the ground that the claimant/appellant in order to prove his case, claimant has examined PW2 Surender Singh, Mechanic. However, when this PW2 Surender Singh has been cross examined by learned counsel for respondents, this witness specifically deposed that he is not surveyor by profession, but the learned Tribunal ignored the fact that the learned Tribunal had issued the notice to Rahul Pam Pvt. Ltd. i.e. the authorized Dealer of Ashoka Leyland Light Vehicles at Karnal and further the



ground fact pertaining to preparation of estimate report by the Mechanic was also ignored, because initially the Estimate Report and the damages to the vehicle assessed by the Mechanic who incorporate the same into the Estimate/Assessment Report. It is accordingly prayed that the impugned Award be set aside.

8. No other argument is made on behalf of the appellant. I have heard learned counsel and perused the case file in detail.

9. It is the case of the appellant that Ashif Khan is also eyewitness of the accident. However, despite direct Court query, no reasons have been given by the appellant for not examining the said Ashif Khan, alleged eyewitness, before the learned Tribunal to establish his case. Further, findings returned by learned Tribunal are as follows:-

“14. Further, from the perusal of testimony of claimant, it comes out that PW1 Sonu Kumar claimant has specifically deposed in his cross examination that it is correct that from the date of accident, till date, he has not spent even a single penny on the repair of his vehicle No, HR-45-B-6096. Further, in his claim petition claimant has pleaded that no claim petition been lodged with the owner/insurer. Whereas in his cross examination, he has specifically deposed that he has also filed a case in permanent Lok adalat/public utility services for the damages of his vehicle no. HR-45-B-6096. Further, on one hand it is mentioned in the FIR Ex.P4 that Sonu Kumar claimant and Ashif Khan sustained injuries. But it is very strange that no MLR relating to Sonu Kumar claimant and Ashif Khan placed on



record in order to prove the injuries. Thus, version of this PW1 Sonu Kumar claimant on the face of it seems to be untrustworthy and not sufficient to prove the facts pleaded in the claim petition. 15. Furthermore, PW1 Sonu Kumar, claimant has not produced any bill regarding repair of the damaged vehicle. Rather, only produced the proposed estimate Ex.P1 dated 8.1.2016. From the perusal of case file, it is revealed that neither any amount has been paid by the claimant in lieu of repair of vehicle in question nor any bill has been produced on the case file to this effect. In order to prove his case, claimant has examined PW2 Surender Singh, Mechanic. However, when this PW2 Surender Singh has been cross examined by learned counsel for respondents, this witness specifically deposed that he is not surveyor by profession. He further deposed that he has not brought any authority from Rahul Pam Private Limited, Karnal. Further it is pointed out here that it was incumbent upon the claimant to examine the Surveyor to prove the actual damage caused to this vehicle in the accident in question. Whereas, claimant has not examined any such Surveyor which makes the claimant version untrustworthy."

10. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. No reasons whatsoever have been given by the learned counsel for the appellant as to why MLR of the appellant as well as the alleged eyewitness Ashif Khan were not produced before the learned Tribunal. Even no reason is given as to why Ashif Khan was not examined before the learned Tribunal. No credible evidence whatsoever has been brought on record by the appellant to prove that



damage was caused to his vehicle by the rash and negligent driving of the offending vehicle. As such, no infirmity can be found in the impugned Award; as appellant has abjectly failed to make out any ground for grant of compensation.

11. In view of the above, present appeal stands **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

23.04.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No