



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220

FAO-8125-2017 (O&M)

Date of decision: 26.03.2025

Ajay

...Appellant(s)

Vs.

Shivam and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Monit Pal Singh, Advocate for
Mr. Abhimanyu Singh, Advocate for the appellant.

Mr. Akshay Jindal, Advocate with
Mr. Vrishank Suri, Advocate for respondent No.2

NIDHI GUPTA, J.

CM-26850-CII-2017

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 28 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 28 days in filing the accompanying appeal is condoned.

FAO-8125-2017 (O&M)

The present appeal has been filed by the injured-claimant against the dismissal of his Claim Petition No. 16 dated 19.05.2012 filed under Section 166 of the Motor Vehicle Act by the learned Motor Accident



Claims Tribunal, Gurgaon (hereinafter referred to as “the learned Tribunal”) vide Award dated 26.05.2017.

2. Learned counsel for the appellant submits that the learned Tribunal was in error in dismissing the claim petition as the appellant had duly proved on record that he had suffered serious injuries due to the rash and negligent driving of the tractor bearing registration No. HR-26-B-0658 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1 and owned by respondent No.2. It is submitted that the appellant had duly established that on intervening night of 1/2.08.2011, when the appellant was going back to his home after completing his labour work, he was sitting on the trolley of the offending tractor, which was being driven by respondent No.1 in a rash and negligent manner. Due to the high speed of the tractor, the trolley of the tractor jumped, as a result of which the appellant fell down from the trolley and received multiple serious injuries all over his body. The accident was witnessed by Sunil Kumar, who had noted down the number of the vehicle. On the basis of statement of Sunil Kumar, FIR No. 299 dated 06.08.2011 was registered at Police Station Sadar, Gurgaon against respondent No.1. Thereafter, the appellant was got admitted in hospital for treatment from where he was referred to Safdarjung Hospital, where he remained from 06.08.2011 to 16.09.2011. It is submitted that accordingly, the appellant was entitled to compensation of Rs.10 lacs on account of pain and suffering, medical expenses, loss of income etc. along with interest @ 18% per annum from the date of accident till realization.



3. Learned counsel appearing on behalf of respondent No.2 opposes the prayer made on behalf of the appellant and submits that case of the appellant remains unproved as the appellant had never stepped into witness box. Even respondent No.1/driver has been acquitted in the FIR trial. It is accordingly prayed that the present appeal be dismissed.

4. No other argument is raised on behalf of the parties.

5. I have heard learned counsel for the parties and perused the case file in great detail.

6. The brief facts of the case as per the version of the claimant are that on the intervening night of 1-2.8.2011, the appellant was going back home after finishing his labour work. He was sitting on the trolley of the offending tractor. When the vehicle reached near Rajiv Chowk, Gurgaon, the appellant fell down from the vehicle and received injuries due to the rash and negligent driving of respondent no.1. However, except for the bald statement of the appellant, there is no evidence to show that the appellant fell from the trolley due to the negligence and rashness on the part of respondent No.1. In fact, the appellant did not appear in the witness box to support his own case, and therefore, failed to prove his own case. It could therefore, well be that he fell from the trolley himself due to his own mistake. As the appellant never appeared in the witness box, even the medical record or MLR or the bills remain unapproved. Even no doctor was examined. Non examination of the claimant amounts to non-proving of the pleadings made. The non-examination of the claimant, non-examination of the doctor who examined the alleged



injuries on the claimant, lead to the irresistible conclusion that negligence is not established.

7. It is further the case of the appellant that the number of the offending vehicle was noted down by eyewitness Sunil Kumar/PW3; on whose statement FIR no.299 was registered on 6.8.2011. However, PW3 Sunil Kumar in his cross-examination could not say that the offending vehicle was being driven by respondent No.1 or that he was negligent/responsible in the falling of the appellant from the trolley. In fact, the complainant/Sunil Kumar PW3 has admitted in his cross-examination that he had not told the name of respondent No.1 to the police and had discovered the name of respondent No.1 only on receipt of warrant issued by the Court against him. As such, rashness and negligence on the part of respondent No.1 is not proved. It is also admitted by PW3 that he had not given his evidence in the criminal trial arising from the FIR No. 299 dated 06.08.2011 against respondent No.1 thereby failing to examine the accusations in the criminal case. It is also not disputed by learned counsel for the appellant that the respondent No.1 stands acquitted in the aforesaid FIR denoting that the accident did not take place due to the negligence.

8. It is also relevant that there is unexplained delay of five days in registration of the FIR no.299 dated 6.8.2011.

9. The appellant had produced his brother Pradeep as PW1. PW1 admitted in his evidence that he was not present at the time of alleged accident and did not know how it had taken place. PW1 did not give evidence in the criminal case. PW1 Pradeep, had further deposed



that the appellant is 100% deaf and dumb since birth; that his brother was missing for many days and on 02.08.2011, the appellant was admitted in Salu Hospital, where the appellant had told him about the accident through sign language. However, except for the bald statement of PW1, there was no evidence brought on record to prove that the appellant is deaf and dumb. Even the claim petition did not bear any averment that the appellant is deaf and dumb and even claim petition was not filed through legal guardian.

10. It is also relevant to note the following dates:-

21.3.2013 – Issues were framed.

18.9.2013 – The claim petition was first dismissed in default when the matter was fixed for the evidence of the appellant.

18.8.2015 – The claim petition was restored to its original number, subject to payment of cost of ₹2000/- in DLSA.

1.9.2015 – The claim petition was again dismissed in default for the second time due to non-deposit of cost.

20.11.2015 – Respondent no.1 was acquitted in the FIR vide judgment dated 20.11.2015 Ex. R1.

25.1.2016 – The application for restoration filed by the claimant was dismissed being devoid of merit.

23.2.2016 – The claimant preferred a revision petition bearing number CR 1349 of 2016 before this Court in which, this Court issued direction to restore the claim petition to its original number.



4.1.2017 – The respondent no.1 was proceeded against exparte before the learned Tribunal.

26.5.2017 – The claim petition is dismissed.

11. From the above discussion, it follows that the undisputed facts that emerge on the record are that the appellant has been unable to prove his case that he was sitting on the trolley of the tractor; or that he fell down from the trolley due to the rash and negligent driving on the part of respondent No.1; no MLR or hospital record was proved by the appellant to substantiate his claim of serious injuries; FIR was registered after an unexplained delay of 5 days; version regarding alleged eye witness PW3 is contradictory.

12. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings, as also the above noted legal position.

13. In view of the above, no ground to interfere in the impugned Award is made out. The present appeal is accordingly **dismissed**.

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

26.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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