



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 04.03.2025

FAO-1555-2014 (O&M)

Vidya Devi & Another

...Appellant(s)

Vs.

Shyam Sunder Nisad & Others

...Respondent(s)

FAO-1426-2014 (O&M)

Vidya Devi & Another

...Appellant(s)

Vs.

Shyam Sunder Nisad & Others

...Respondent(s)

FAO-4862-2013 (O&M)

Vidya Devi & Another

...Appellant(s)

Vs.

Shyam Sunder Nisad & Others

...Respondent(s)

CORAM:**HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:-

Ms. Nargis, Advocate for
Mr. Sandeep Goyat, Advocate
for the appellants.

Mr.Jainainder Saini, Advocate
for respondents No.1 & 2.

Mr. R.C. Kapoor, Advocate
for respondent No.3.

NIDHI GUPTA, J.**CM-5252-CII-2014 IN FAO-1555-2014**

This is an application under Section 151 CPC for
condonation of delay of 77 days in re-filing the appeal.



After going through the contents of the application, which is supported by affidavit of the Clerk of learned counsel for the appellants, the same is allowed subject to all just exceptions and delay of 77 days in re-filing the present appeal is condoned.

CM-5253-CII-2014 IN FAO-1555-2014

This is an application under Section 5 of Limitation Act for condonation of delay of 107 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and delay of 107 days in filing the present appeal is condoned.

CM-4930-CII-2014 IN FAO-1426-2014

This is an application under Section 151 CPC for condonation of delay of 77 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit of the Clerk of learned counsel for the appellants, the same is allowed subject to all just exceptions and delay of 77 days in re-filing the present appeal is condoned.

CM-4931-CII-2014 IN FAO-1426-2014

This is an application under Section 5 of Limitation Act for condonation of delay of 107 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and delay of 107 days in filing the present appeal is condoned.

**CM-20801-CII-2013 IN FAO-4862-2013**

This is an application under Section 5 of Limitation Act for condonation of delay of 34 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and delay of 34 days in filing the present appeal is condoned.

MAIN CASE

All the present 3 appeals are being disposed of by this common order as they arise from common Award dated 23.04.2013 passed by Motor Accident Claims Tribunal, Hisar whereby three claim petitions filed by the appellants under Section 166 of the Motor Vehicles Act, have been dismissed. Parties, facts and issues in all the three appeals are identical.

FAO-1555-2014 arises out of Claim Petition No.36-MACT dated 04.02.2012 titled as "Vidya Devi & Another Vs. Shyam Sunder Nisad & Others" seeking compensation on account of death of Lokesh Bansal;

FAO-1426-2014 arises out of Claim Petition No.37-MACT dated 04.02.2012 titled as "Vidya Devi & Another Vs. Shyam Sunder Nisad & Others" seeking compensation on account of death of Ritu Bansal; and

FAO-4862-2013 arises out of Claim Petition No.38-MACT dated 04.02.2012 titled as "Vidya Devi & Another Vs. Shyam Sunder Nisad & Others" seeking compensation on account of death of Gravit Bansal. The 2 claimants in all the above claim petitions/appeals are the parents of



deceased-Lokesh Bansal. For the sake of convenience, the facts are being drawn from FAO-1555-2014.

2. Briefly stated, the case of the appellants as set out in the claim petition is that on 19.05.2011, Lokesh Bansal along with his wife Ritu Banal and son Gravit were travelling in Car bearing registration no.HR-20N/5716 from Delhi to Vrindawan. The Car in question was being driven by Lokesh. When they reached near Alawalpur Chowk, Palwal, a truck tanker bearing registration no.HR-38G/6737 (for short 'the offending vehicle') was found wrongly parked in the middle of the road without any indicator/parking lights by the respondent no.1. Another truck was going ahead of the Car in question and on seeing the offending vehicle parked on the road, the driver of the truck going ahead of the Car in which the deceased persons were travelling, applied brakes; and as a result of which the Car of the victims hit the backside of that truck and thereafter had caught fire. All the occupants of Car in question had died in the said accident. The respondent no.1 was the driver of offending vehicle. The respondent no.2 was the owner of the offending vehicle. Respondent no.3 was the insurer of the offending vehicle.

3. Learned counsel for the appellants submits that the claimants had categorically alleged in their claim petition that the offending vehicle was incorrectly and negligently parked in the middle of the road by respondent No.1. Another truck was going ahead of the car in question and on seeking the offending vehicle parked on the road, the driver of the truck



going ahead of the car of the deceased persons had applied brakes and as a result of which the car of the victims hit the backside of the truck and caught fire due to which all the occupants of the car expired. It is submitted that therefore, from the above facts, it is clear that the accident had occurred due to the rashness and negligence of respondent No.1. However, the learned Tribunal has failed to appreciate this fact. The appellants had led sufficient oral and documentary evidence to prove the accident in question. Admittedly, even FIR was registered, and Police has also filed challan under Section 173 Cr.P.C. against respondent No.1 for causing the accident by parking the offending vehicle in the middle of the road in negligent manner.

4. It is further submitted that the Ld. Tribunal has not appreciated the evidence given by the ASI Gajraj Singh (PW4) who has deposed that on 19.05.2011, he was posted at P.S. Camp Palwal as I.O. and on that day he along with constable Iqbal was on patrolling on NH-2 in Govt. Jeep No. HR- 38P/7580 driven by E.H.C. Naresh Kumar in Night time. When at about 2.40 AM when they were present on the Alawalpur Chowk, an intimation was received that an accident has been taken place between the car and truck and the car has got fired in that accident upon which he along with other policemen reached over the spot and he found that Maruti Zen Car was burning continuously. He called the fire brigade. Two fire brigade came on the spot and they controlled the fire. In this accident three dead bodies were found in the car in which one man, one lady and a child



was found. The dead bodies were removed from the car and taken to General Hospital, Palwal where Vivek Bansal complainant came present and his statement was recorded and Rukka was sent to the policed station for registration of the case FIR No. 182 dated 19.05.2011 under section 279/304-A. Truck no. HR-38G/6737 and R.C., driving license and insurance was taken into possession by recovery memos in the presence of the witnesses, Constable Shishpal no.385 and accused Shyam Sunder.

5. Despite the clear and cogent evidence of PW4 ASI Gajraj Singh and PW1 Rajesh Kumar, PW2 Kishore Kumar, PW3 Suresh Bansal as also the documentary evidence (Ex.P1 to P19), the learned Tribunal has dismissed the claim petitions. It is accordingly prayed that the claim petitions of the appellants be allowed.

6. Per contra, learned counsel for respondent No.3/Insurance Company opposes the prayer made on behalf of the appellants and submits that the impugned Award does not suffer from any infirmity. It is submitted that it is the own case of the appellants that between the alleged offending vehicle and the Maruti car in which the deceased were travelling, there was a truck. Admittedly, the car of the deceased was fixed with gas cylinder and the same struck the unknown truck. There was no collision of the car with the offending vehicle. The collision of the car had occurred with the unknown truck in between. Further, there was no eyewitness to the accident in question. It is accordingly prayed that the present appeal be dismissed.



7. No other argument is made on behalf of the parties.
8. I have heard learned counsel for the parties and perused the case file in great detail.
9. I find no merit in the arguments advanced by learned counsel for the appellants. It is the own case of the appellants that the Maruti Zen car in which all the 3 deceased persons were travelling, was being driven by deceased Lokesh Bansal; and that between the said Maruti Zen car and the alleged offending vehicle, there was an unknown truck; into which the Maruti Zen car had collided and caught fire upon the collision as it was fitted with a gas cylinder. The driver of the unknown truck had fled away with the said truck. FIR was also registered against unknown vehicle and unknown person. Admittedly, the Maruti Zen car never hit into the offending vehicle.
10. It has been argued by the learned counsel for the appellants that the accident had taken place as the driver of the truck going ahead of the Maruti Zen car had to suddenly apply brakes on seeing the offending vehicle which was parked in the middle of the road. As a result of which the Maruti Zen car of the victims hit the backside of the truck and caught fire. However, there is no basis whatsoever for the appellants to allege as above. The said argument of the appellants is conjectural as admittedly, no eyewitness to the accident was examined by the appellants. The claimants have failed to explain as to why this was so. Admittedly, none of the claimants' witnesses were present at the time of accident. Even



PW3/father of the deceased was not present at the place of accident. Thus, except for the bald averment of the appellants, there is nothing to indicate that the unknown truck hit into the offending vehicle as it was wrongly parked. In any event, it was also incumbent upon Lokesh Bansal to maintain sufficient distance between the unknown truck in front of the Maruti Zen car he was driving. In this situation, the offending vehicle or respondent no.1 cannot be held to be negligent.

11. Relevant findings returned by learned Tribunal in the impugned Award are as under:-

“17. However, learned counsel for the petitioners argued that the respondent no.1 had contributed to this accident by parking his vehicle negligently upon a public road. The abovesaid argument could help the petitioners only if the Car of the victims had actually collided with the vehicle of the respondent no.1 at any stage. Admittedly, the Car of the victims had actually collided with another unknown vehicle and the driver of the said unknown vehicle had fled away from the spot alongwith the abovesaid unknown vehicle. Undisputedly, the Car of victims had never collided with the vehicle of the respondent no.1 at any stage. Accordingly, in the given facts and circumstances, the respondents no.1 had not contributed to this accident in any manner. Thus, the above said argument on behalf of the petitioners is without any force and is overruled.

18. Further, learned counsel for petitioners argued that Amit Chaudhry (the cleaner of vehicle of respondent no.1) admitted that the vehicle of respondent no.1 was responsible for this accident. Reliance in this behalf was placed upon the statement



of abovesaid Amit Chaudhry alleged to be recorded by the police during investigations of the criminal case pertaining to this accident. However, admittedly, the abovesaid alleged statement of Amit Chaudhry was never signed or thumb-marked by the abovesaid Amit Chaudhry at any stage in token of its correctness. Accordingly, the abovesaid alleged statement of Amit Chaudhry can not be relied upon by the Tribunal. Moreover, the abovesaid Amit Chaudhry was never examined as a witness by the petitioners during the trial of this case. the petitioners have failed to explain as to why the abovesaid witness Amit Chaudhry was withheld from the tribunal. Under these circumstances, the abovesaid argument on behalf of the petitioners is also without any substance and is overruled.”

12. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.
13. In view of the above, present appeals are **dismissed**.
14. Pending application(s) if any also stand(s) disposed of.

04.03.2025
Sunena

(Nidhi Gupta)
Judge

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