
Darshan Singh Vs Devinder Singh and Another

First Appeal from Order No. 2293 of 2004

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 30, 2006

Acts Referred:

Motor Vehicles Act, 1939 " Section 110A#Motor Vehicles Act, 1988 " Section 158(6), 166, 166(3), 173

Citation: (2007) 2 ACC 766 : (2006) 144 PLR 306 : (2006) 4 RCR(Civil) 749

Hon'ble Judges: T.P.S. Mann, J; M.M. Kumar, J

Bench: Division Bench

Advocate: D.S. Brar, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The award dated 19.2.2005 is subject matter of challenge in this appeal u/s 173 of the Motor Vehicles Act 1988. The

appeal is preferred by the owner-cum-driver of the offending vehicle. It has been found as a fact that the claimant-respondent has suffered injuries

on account of rash and negligent driving of the appellant Darshan Singh. The scooter of the claimant-respondent also suffered damage. A total

amount of Rs. 30000/- has been awarded alongwith interest @ 9 percent p.a. and costs of Rs. 500/-. However contentious issue No. 3

concerning delay of 7 years has been decided in favour of the claimant-respondent vide order dated 17.2.2004 and it has been categorically found

that the appellant had promised to pay Rs. 50000/- and the afore-mentioned assertion has not been controverted. The view of the Tribunal under

issue no. 3 reads as under:

Though this claim petition was filed on 7.9.2000 and the accident in question is dated 25.10.1993 and there is delay of about seven years but this

delay is found already condoned as specific issue about condonation of delay was framed on which after recording evidence finding has been

recorded in favour of the claimant vide order dated 17.2.2004 and in addition to it the claimant has explained that respondent had offered in a

compromise Rs. 50000/- but he backed out and in this process this delay has occurred. This fact has been admitted by driver Darshan Singh who

admitted that the claimant has asked him to give Rs. 50000/- as compensation but he refused so he admitted this ground set up by the claimant as

the ground for condonation and it is not disputed that there is no such limitation about such delay when a case is found already registered on

26.10.93 on the same version against the driver Darshan Singh which was concluded on 13.10.1998 against the respondent so fresh limitation

would start from 13.10.1998 but this claim is found filed on 7.9.2000 so in these circumstances of this case there is no bar about such claim nor

any such specific bar has been pointed out by the learned Counsel for the respondent. Shri Gajjan Singh or any other counsel so this issue is

decided in favour of the claimant.

2. Having heard the learned Counsel we are of the view that modest a sum of Rs. 30000/- has been awarded towards medical expenses alongwith

interest @ 9 percent p.a. which hardly calls for interference of this Court. The argument of the learned Counsel that the accident had occurred on

25.10.1993 and the claim petition was filed on 8.9.2000 which is hopelessly time barred has not impressed us. The Tribunal has found it as a fact

that there was an acknowledgement to pay Rs. 50000/- by the appellant and he did not keep the promise. The version of the claimant-respondent

has been admitted by the appellant as is clear from the finding recorded under issue No. 3. On the same version the case has been found to be

registered on 26.10.1993 which has concluded on 13.10.1998. In any case the claim petition was filed on 8.9.2000 Sub-section 3 of Section 166

of the Act had already been amended on 14.11.1999 by deleting the period of limitation which was earlier provided to be 12 months.

3. The controversy with regard to the application of amended provision retrospectively has been put to rest by the Supreme Court in the case of

Dhannalal Vs. D.P. Vijayvargiya and Others, holding that the Tribunal has to entertain a claim petition without taking note of the date on which

accident had taken place. The views of the Lordships is discernible from para 7 of the judgment which reads as under:

...When Sub-section (3) of Section 166 has been omitted then the Tribunal has to entertain a claim petition without taking note of the date on

which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when

Sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act

as well as in the new Act in order to protect the interests of the victims of the accidents and their heirs if the victims die....

4. After referring to Section 158(6) of the Act and noticing the duties enjoined upon the officer incharge of the police station their Lordships

observed as under:

In view of Sub-section (6) of Section 158 of the Act the officer incharge of the police station is enjoined to forward a copy of information/report

regarding the accident to the Tribunal having jurisdiction. A copy thereof has also be forwarded to the insurer concerned. It also requires that

where a copy is made available to the owner of the vehicle he shall within thirty days of receipt of such copy forward the same to the Claims

Tribunal and insurer. In this background the deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion

of the said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation

although not being preferred earlier because of the expiry of the period of limitation prescribed how the victim or the heirs of the deceased shall be

in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal the High Court or the

Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get

compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had

not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990 in view of the amending Act he became

entitled to file such claim petition the period of limitation having been deleted the claim petition which has been filed and is being pursued up to this

Court cannot be thrown out on the ground of limitation.

5. It has been concluded in the afore-mentioned judgment that the only exception would be where the claim petition has been dismissed as time

barred and such an order has attained finality. The afore-mentioned judgment has been followed in case of The New India Assurance Co. Ltd. Vs.

C. Padma and Another, . Therefore there is no substance in the argument and the same is hereby rejected.

6. We are further of the view that the judgment of this Court in the case of Pritam Kaur v. Mohar Singh and Ors. (1980) 82 P.L.R. 77 on which

reliance has been placed by the learned Counsel for the appellant is contrary to the view taken by the Supreme Court in Dhanna Lal's case (supra)

and the same has to be over-ruled. In the afore-mentioned judgment it has been laid down that if the period of limitation had expired prior to the

amended Act the claimant cannot derive any benefit of extended period of limitation. The afore-mentioned view was taken when the amendment

was made in Section 110A(c) of the Motor Vehicles Act 1939. The ratio of the judgment cannot be followed on account of the views expressed

by the Supreme Court in Dhanna Lal's case (supra). We therefore over rule the view taken by this Court in Pritam Kaur's case (supra).

7. For the reasons stated above this appeal fails and the same is dismissed.