

(2016) 11 P&H CK 0124

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 4931 of 2013 (O & M).

Raj Kumar - Appellant @HASH
Sunil and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 7, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A

Citation: (2016) 4 ACC 592 : (2017) 1 TAC 414

Hon'ble Judges: Rajan Gupta, J.

Bench: Single Bench

Advocate: Mr. Saurabh Dalal, Advocate, for the Appellant; Mr. Sanjeev Kodan for Mr. Kamal Mor, Advocates, for the Respondent Nos. 1 and 2; Ms. Shamsher Kaur, Advocate, for the Respondent No. 3

Final Decision: Dismissed

Judgement

Rajan Gupta, J. - CM-20918-CII-2013:

This is an application under Section 151 CPC seeking condonation of 58 days delay in re-filing the appeal.

For the reasons mentioned in the application, same is allowed and delay in re-filing the appeal is condoned.

CM-20919-CII-2013:

2. This is an application under Section 5 of the Limitation Act, seeking condonation of 33 days delay in filing the appeal.

For the reasons mentioned in the application, same is allowed and delay in filing the appeal is condoned.

FAO-4931-2013:

3. Appellant/claimant has impugned the award dated 17.01.2013, passed by Motor Accident Claims Tribunal, Rohtak, whereby claim petition filed by the appellant under section 163-A of the Motor Vehicle Act, for grant of compensation has been dismissed.

4. Learned counsel for the appellant has argued that tribunal has erred by holding that petitioner is not entitled to any compensation as he is son of respondent no. 2, owner of the motorcycle, on which appellant was travelling. He has submitted that respondent No.1 was employed by respondent no.2 and as such, injuries ought to have been indemnified by the insurance company.

5. Learned counsel for respondent No. 3-insurance company, on the other hand, has argued that the appellant filed the claim petition in connivance with his father i.e. respondent No. 2. She has submitted that appellant was travelling on the motor cycle, which was being driven by his friend respondent No. 1 and owned by his father i.e. respondent No.2. Thus, the tribunal has rightly dismissed the claim petition of the appellant.

6. I have heard learned counsel for the parties and given careful thought to the facts of the case.

7. Accident is alleged to have occurred on 21.01.2010, wherein appellant suffered injuries. It is claimed that appellant was a pillion rider on a motorcycle being driven by respondent No.1. Same was hit by a road-roller from back side, as a result of which appellant fell down and suffered injuries on various parts of his body. A claim petition under section 163-A of the Motor Vehicles Act was filed by the appellant against driver, owner and insurer of the motor cycle. However, driver, owner and insurer of the road-roller have not been impleaded as respondents. A perusal of records shows that respondent No.2, who is father of the appellant and was owner of the motor cycle in question did not appear in the claim petition and was proceeded ex-parte. The appellant has failed to prove that respondent No.1 was under the employment of respondent No.2. The petitioner being son of respondent No.2 stepped into his shoes, thus, he cannot claim any compensation from the insurance company. In my considered view, the claim petition filed by the appellant was not maintainable. Apparently, there is no error or infirmity in the findings arrived at by the Tribunal. The appeal is without any merit and is hereby dismissed.