

Court No. - 6**Case :-** MATTERS UNDER ARTICLE 227 No. - 6160 of 2023**Petitioner :-** Icici Lombard General Insurance Co. Ltd. Thru. Manager (Legal), Gomti Nagar, Lucknow**Respondent :-** Smt. Rambeti And 3 Others**Counsel for Petitioner :-** Anchal Mishra**Hon'ble Rajnish Kumar,J.**

1. Heard, Shri Anchal Mishra, learned counsel for the petitioner.
2. This petition has been filed challenging the orders dated 08.08.2023 and 04.10.2023 passed in MACP No.219 of 2022; Rambeti and others Versus Muneshwar and another by the Motor Accident Claims Tribunal, Sitapur (here-in-after referred to as the Tribunal).
3. By means of the order dated 08.08.2023, the Tribunal had proceeded ex-parte recording that the service has been deemed sufficient on the respondents No.1 and 2 on 28.04.2023 but the written statement has not been filed and by means of the order dated 04.10.2023, the application for recall of order dated 08.08.2023 filed by the petitioner has been dismissed on the ground that it is not supported by the affidavit of the party or his counsel, who may have clarified the position.
4. Learned counsel for the petitioner submits that after receipt of the notice, Shri S.K.Khurana, Advocate was engaged to appear on behalf of the petitioner. On account of mistake of clerk of the counsel of the petitioner, the file could not be prepared and vakalatnama could not be filed. Therefore after coming to know about the order dated 08.08.2023, an application for recall of order dated 08.08.2023 was moved with the affidavit of the Clerk of the counsel for the petitioner, which has been dismissed on the ground that he is not a party, whereas his affidavit could not have been discarded in view of

Order 19 Rule 3 of Civil Procedure Code 1908 (here-in-after referred to as CPC) and the application could not have been rejected on this ground, therefore the petitioner is constrained to approach this court. He submits that the impugned orders are not sustainable and are liable to be set aside by this court.

5. Having considered the submissions of learned counsel for the petitioner, I have perused the records.

6. As borne out from the pleadings, the claim petition under Section 166/140 of the Motor Vehicles Act, 1988 (here-in-after referred to as M.V.Act) bearing MACP No.219 of 2022 has been filed by the respondents no.1 to 3. Respondent no.4 in this petition is respondent no.1 in the Claim Petition. The notices were issued to the respondents and the service was deemed sufficient by means of the order dated 28.04.2023. Despite service of notice on the petitioner, who is respondent no.2 in the Claim Petition, he had not appeared and filed written statement, therefore by means of the impugned order dated 08.08.2023 the Tribunal had proceeded ex-parte. The petitioner filed an application for recall of the order dated 08.08.2023 alleging therein that after receipt of the notice Shri S.K.Khurana, Advocate was engaged but on account of mistake and confusion of the clerk of Shri S.K.Khurana, Advocate, the file could not be prepared and he could not put in appearance. The application was filed with the affidavit of the Clerk of Shri S.K.Khurana, Advocate.

7. The Tribunal, after considering the application and the affidavit, rejected the application on the ground that the application is not supported by the affidavit of the party or his counsel, who may have clarified the position and the deponent is not a party in the case, therefore, there is no good ground to recall the order dated 08.08.2023.

8. The Claim Petition has been filed under Section 166/140 of the M.V.Act, 1988. Section 169 of the M.V.Act provides the procedure and powers of Claims Tribunals. Sub Rule (1) of Section 169 provides that for holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Section 176 of the M.V.Act provides the Power of State Government to make rules, which is extracted here-in-below:-

"176. Power of State Government to make rules.—A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:—
(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter
(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
(e) any other matter which is to be, or may be, prescribed."

9. In view of Sub Section (c) of Section 176 above the State Government may make rules for the purpose of carrying into effect the provisions of section 165 to 174, and in particular, such rules may provide the powers vested in the Civil Court which may be exercised by a Claims Tribunal.

10. The U.P.Motor Vehicle Rules, 1998 (here-in-after referred to as the Rules) have been made in exercise of powers under Sections 28, 38, 65, 95, 96, 107, 111, 138, **176** and 213 of the M.V.Act read with Section 21 of the General Clauses Act, 1987 and in supersession of all existing rules on the subject.

11. Chapter IX of the said Rules provides about the claims Tribunal. Rule 204-A (7) provides that in case of default in appearance of a party the provisions of Order -IX of CPC would apply. Sub Rule (7) of Rule 204-A of the Rules is extracted here-in-below:-

"(7) If statements of facts about the compensation claimed, has been furnished by the parties and subsequently commits default in appearance, the provisions of Order-IX of the Code of Civil Procedure, 1908 would apply."

12. Order IX Rule 7 provides that where the Court has adjourned the hearing of the suit *ex-parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. Therefore the good cause for previous non appearance is to be assigned by the defendant. Order IX Rule 7 CPC is extracted here-in-below:-

"7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.- Where the Court has adjourned the hearing of the sit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."

13. In the present case the petitioner is defendant in the claim petition filed by the respondents, but the alleged cause for previous non appearance has been shown before the concerned court by a person, who is not party to the petition therefore this court is of the view that there is no illegality or error in the impugned orders, whereas the cause is to be assigned by the defendant.

14. So far as the plea of learned counsel for the petitioner that the affidavit of clerk of Shri S.K.Khurana, Advocate could not have been discarded in view of Order 19 Rule 3 CPC, this court is of the view that the contention of learned for the petitioner is misconceived and not tenable for the reason that Rule 221 of Chapter IX of the Rules provides the provisions of the CPC which are applicable on the Claims Tribunal in certain cases, which is extracted here-in-below:-

"221. Code of Civil Procedure to apply in certain cases- The following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to

proceedings before the Claims Tribunal, namely, Rules 9 to 13 and 15 to 30 of Order V; Order IX, Rules 3 to 10 of Order XIII; Rules 2 to 21 of Order XVI; Order XVII and Rules 1 to 3 of Order XXIII."

15. The aforesaid Rule does not provide for applicability of Rule 19 (3) of CPC on the Claims Tribunals, therefore, it cannot be applied in the proceedings before the Claims Tribunals.

16. In view of above and considering the over all facts and circumstances of the case, this court is of the view that impugned orders have rightly been passed in accordance with law because the petitioner has not put in appearance and filed the written statement despite sufficient service and the petitioner, who is respondent/defendant in the claim petition has failed to assign good cause for his previous non appearance before the Tribunal and the cause assigned by the registered Clerk of Shri S.K.Khurana, who is neither party nor the counsel of the petitioner, could not have been accepted. Therefore the order dated 04.10.2023 has also rightly been passed in accordance with law by the Tribunal. This court does not find any illegality or error in the impugned orders, which may call for any interference by this court. The petition is misconceived and lacks merit.

17. The petition is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 12.12.2023/Banswar