IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2483 of 2009 (O&M)
Date of Decision: August 31, 2015

Sanjay Kumar

...Petitioner

Versus

The New India Assurance Company Limited, Rewati & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Gorakh Nath, Advocate,
for the petitioner.

Ms.Vandana Malhotra, Advocate,
for respondent No.1.

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AMIT RAWAL, J. (Oral)

The petitioner has knocked the door of this Court by challenging the order dated 6.1.2009 (Annexure P-1), which came to be passed on an application filed by the Insurance Company for impleading the owner and driver of the Motorcycle No.HR-36F/0572 as respondent in the execution proceedings. The impugned order reads thus:-

> "*Arguments on the objections heard. Sanjay Kumar has submitted that the applicant/insurance company has got no right to recover the compensation from him. The objections raised by Sanjay Kumar are bogus and are liable to be dismissed. The insurance company is claiming the*

compensation as per the order of the Hon'ble Punjab and Haryana High Court dated 10.11.2006. The insurance company has been given liberty to recover the apportioned amount liable to be paid by the other tort feasor on the basis of the findings recorded in the impugned award and also by establishing its rights before the appropriate forum. Now, warrant of attachment be issued for 04.03.2009."

Mr.Gorakh Nath, learned counsel appearing on behalf of the petitioner submits that as per the award dated 31.7.2006, the petitioner was not arrayed as a party, though issue No.3 with regard to non-joinder and mis-joinder of parties had been framed. Issue No.3 reads thus:-

"Whether this petition is bad for non-joinder of necessary parties or mis-joinder of parties? OPR."

The Motor Accident Claims Tribunal, Rewari, vide award dated 31.7.2006, held that all the respondents shall be jointly and severally liable to pay the award amount to the petitioner and the first charge will always be of respondent No.3, i.e., the New India Assurance Company Limited. The operative part of the order reads thus:-

" All the respondents shall be jointly as well and severally liable to pay the Award amount to the petitioner, although the first charge shall always remain with respondent No.3-The New Indian Assurance Company Limited. Memo of costs be prepared accordingly. File be consigned to the record-room after due compliance."

Learned counsel for the petitioner further submits that there is no provision in the law for impleading a party in a decree, as Order 1 Rule 10 CPC applies, only during the pendency of the suit or proceedings and, therefore, the impugned order, which is lacking reasons, much less, cogent reasons is not sustainable in law.

Ms.Vandana Malhotra, learned counsel appearing on behalf of respondent No.1 submits that the award, aforementioned, was challenged by the Insurance Company by filing an appeal, i.e., FAO No.4921 of 2006 in view of the fact that the Motor Accident Claims Tribunal has not apportioned the liability after rendering the findings in detail that deceased Krishan Kumar had died in a motor vehicular accident caused by the driver of Trolla and as well as Motorcyclist PW-2 Sanjay Kumar petitioner. The said findings read thus:-

> "*In the light of foregoing discussion, it is held that there is sufficient evidence on the file to prove that Krishan Kumar had died in a motor vehicular accident, as caused by respondent No.1 as well as motor cyclist PW-2 Sanjay Kumar, while driving the aforesaid Trolla and motor-cycle respectively, in a rash and negligent manner. This issue stands decided in favour of the petitioner accordingly.*"

The Division Bench of this Court, after noticing the contentions, disposed of the appeal by holding that the the Insurance Company shall be at liberty to recover the apportioned amount liable to be paid by other tort feasor on the basis of the findings recorded in the impugned award and also by establishing its right before appropriate forum and, therefore, rightly so, the application for impleading Sanjay Kumar in the execution proceedings was filed.

I have heard the learned counsel for the parties and appraised the paper book.

The operative part of the order dated 10.11.2006 passed in FAO

No.4921 of 2006 reads thus:-

> "*Accordingly, we grant liberty to the appellant to recover the apportioned amount liable to be paid by the other tort feasor on the basis of the findings recorded in the impugned award and also by establishing its right before appropriate forum.*
>
> *With the aforesaid indulgence, the impugned award is affirmed and the F.A.O. is dismissed in limine.*"

This Court, while dismissing the appeal, had not only given liberty to the Insurance Company, i.e., the New Indian Assurance Company Limited to recover the apportioned amount from the tort feasor on the basis of the findings recorded in the impugned award, but also by establishing its right before the appropriate forum.

In my view, the appropriate forum was before the Motor Accident Claims Tribunal for modification of the decree by moving an application for impleading Sanjay Kumar in the main petition and not in the manner and mode which has been done, i.e., by moving an application during the pendency of the execution application. The provisions of Order 1 Rule 10 CPC leave no manner of doubt that same would apply only during the pendency of the original proceedings and not in execution proceedings. In my view, the impugned order, which is not only sketchy but has been passed in a most mechanical manner, is not sustainable and is hereby set-aside. The Insurance Company would be within its right to establish their rights in an appropriate forum as per the observation given by the Division Bench in the order dated 10.11.2006.

In view of what has been observed above, the revision petition is allowed.

If any application for condonation of delay is filed by the Insurance Company, the Court shall consider the same uninfluenced by this order as they are pursuing the matter in a wrong forum.

Mr.Gorakh Nath submits that his client would not be averse in disclosing the particulars of the Insurance Company of the motorcycle to the New India Assurance Company Limited.

August 31, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**