

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7418 of 2012 (O&M)
Date of decision: 10.03.2015

Rakesh Kumar Jain

... Petitioner

versus

New India Assurance Co. Limited and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kulwant Singh, Advocate for the petitioner.

Mr. R.C. Gupta, Advocate for respondent No.1.

None for respondent No.2.

Ms. Pratibha Yadav, Advocate for respondent Nos. 3 to 6.

K.Kannan, J.

The revision petition is to set aside the ex-parte decree filed by the owner-cum-driver beyond the period of limitation. The ex-parte decree was passed on 05.03.2010 and the owner of the vehicle had a lame excuse to give that he was unwell. The court made a rendering on the fact through evidence produced that he had been brought on non-bailable warrant in Court on 22.12.2009 and he was again in court on 12.01.2010. He produced the same document to show that he was taking treatment at Dehradun having suffered a hip fracture. The document produced revealed that the fracture after 11 months. I find simply no justification for non-appearance of the owner and there shall be no reason to interfere with the same.

In normal circumstances, we must have dismissed the petition and left it there, but, in this case I find that there has been manifest injustice caused to the claimants, who have not been able to secure any amount, although the award is passed. The Insurance

Company had been made as a party as a 3rd respondent before the Motors Accident Claims Tribunal (in short the 'MACT') and by the fact that the owner-cum-driver was not holding an effective and valid driving licence it proceeded to pass the award only against respondent Nos. 1 and 2. The court was rejecting an argument, to make the insurer liable, placed by the counsel for the petitioner on the basis of the decision of Hon'ble the Supreme Court in New India Insurance Company Limited Vs. Swaran Singh, 2004 1 ACJ 1, that reiterated a principle established earlier through the judgment of Hon'ble the Supreme Court in New India Assurance Company Limited Vs. Kamla, (2001) 4 SCC 342. Hon'ble the Supreme Court had ruled, while interpreting the Provisions of Section 149 (4) & (5) that even in the event of breach of violation of terms of the policy, the amount shall be paid by the insurance company and recovered from the owner-cum-driver for such breach. The MACT was applying a wrong principle of law even when the correct decision was cited by the counsel. I will see this wrong decision exonerating the insurance company as perpetrating very serious prejudice and I invoke the power under Order 41 Rule 3 to set aside the decree that has exonerated the 3rd respondent. I cast the liability on insurance company and leave it to the insurance company to take appropriate action for recovery against owner and driver. I notice that there is no appeal filed by the claimants against the dismissal of the petition against the insurance company. When I am making insurance company liable by invoking the Order 41 Rule 33, I am aware I am extending the jurisdiction in the area which will not strictly be brought in revisional jurisdiction. However, I find that a constitutional court exercising supervisory jurisdiction over the subordinate courts ought to make appropriate interventions when there is manifest injustice. Exoneration of the insurance company has resulted in the situation where the claimants have not reaped the benefits of the award and the owner's recalcitrance and lame excuses have contributed to empowering the insurance company to take up irresponsible pleas that

has fended off a lawful claim from the family of the victims in an accident.

Even while dismissing the revision petition filed by the petitioner for setting aside the award, I impose a liability of the award against the insurance company leaving it to the insurance company to secure the recovery in the manner contemplated by the judgment of Hon'ble the Supreme Court in the two decisions referred to above.

The civil revision petition is disposed of with the above directions.

(K.KANNAN)
JUDGE

10.03.2015
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