

FAO No. 5801 of 2013
Date of Decision: 12.02.2015

SHEETAL NATH AND OTHERS

..... Appellants

VERSUS

PAWAN KUMAR AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Ashit Malik, Advocate
for the appellants.Mr. Harmandeep Singh Sullar, Advocate
for respondents No.1 and 2.Ms. Vandana Malhotra, Advocate
for respondent No.3 (Insurance Company).**MAHAVIR S. CHAUHAN J. (ORAL)**

Award dated 08.07.2013 passed by learned Motor Accident Claims Tribunal, Kurukshetra ("the Tribunal" for short) is under challenge in this appeal brought by the appellants. In fact, the learned Tribunal has non-suited the appellants only on the ground that married daughter of the deceased Neelam Devi has not been made a party to the proceedings.

Learned counsel for the appellants has pointed out that vide order dated 06.07.2013 whereby an application made by the appellants to implead said Neelam Devi as a party was declined by the learned Tribunal. The situation makes it necessary to refer to sub-rule 2 of Rule 10 of Order 1 of the Code of Civil Procedure, 1908 which reads as under:-

"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or

defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".

In view of the mandate as contained in sub-rule 2 referred to above, the Tribunal was under an obligation to order impleadment of any party thought necessary for disposal of the matter before it. However, the learned Tribunal has not only overlooked the aforestated provision but has also dismissed application brought by the appellants to implead said Neelam Devi.

In this view of the matter, the learned Tribunal cannot be said to be justified in dismissing the claim application only because of non-impleadment of Neelam Devi, married daughter of the deceased.

The accident out of which the claim application has arisen took place on 03.04.2012 whereas according to plea of the appellants, Neelam Devi was married in the year 1991 to Kuldeep Singh at village Gudha.

If at all, found necessary inspite of the abovestated fact, said Neelam Devi could be impleaded as a proforma respondent even by the learned Tribunal. In these circumstances without saying anything further on the merits of the case, the appeal is allowed, impugned award is set aside and the case is remanded back to the learned Tribunal with a direction to implead Neelam Devi as a proforma respondent if so deemed necessary and to proceed further with the matter in accordance with law. As the matter had already been delayed unreasonably, it is hoped and expected that the learned

Tribunal will disposed of the matter as expeditiously as possible but not later than four months from the date the parties put in appearance before the learned Tribunal.

Parties through their respective counsel are directed to appear before the learned Tribunal at 10.00 A.M. on 16.03.2015.

(MAHAVIR S. CHAUHAN)
JUDGE

12.02.2015
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