

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.M. NOS.21963-64 CII OF 2015 &
F.A.O. NO.7019 OF 2015**

DATE OF DECISION: NOVEMBER 02, 2015

Jasmer Singh

.....Appellant

VERSUS

Sharanjit Kaur and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Jatin Salwan, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. NO.21964 CII OF 2015

C.M. is allowed.

Exemption is granted from filing certified copies of the documents. Further permission is also granted to place on record typed copies of the same.

C.M. NO.21963 CII OF 2015 & F.A.O. NO.7019 OF 2015

Challenge in this appeal is to the order dated 11.08.2015 passed by the learned Additional District Judge-cum-Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as “the Tribunal”), vide which an application moved by the appellant for setting-aside the exparte judgement and decree/award dated 03.02.2007 passed by the Tribunal, in which the

appellant, who was respondent No.2, has been proceeded against exparte on 03.11.2004, stands dismissed.

Learned counsel for the appellant has referred to various zimni orders passed by the Tribunal to indicate that the service was never effected upon appellant-respondent No.2. He contends that even if the order dated 28.09.2004 is looked at, it would indicate that respondent No.2 was not residing at the given address and a fresh summon was issued for 03.11.2004 on filing of Registered Cover (for short, "RC") within three days and also through substitute service/Munadi for the date fixed on furnishing the requisite fee. In the order dated 03.11.2004, nothing has been mentioned with regard to the result of the summons issued through RC. The Munadi, which has been conducted, is at the address, which was mentioned in the petition i.e. Village Kotha Sahib and not in Village Kotla Shahia, Post Office Bhullar, Tehsil Batala, District Gurdaspur. He, therefore, contends that even if the Munadi has been effected that would not make any difference as it would be in some other village i.e. other than where the appellant resides and, thus, the order dated 03.11.2004, proceeding against him exparte, cannot sustain.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned order.

A perusal of the impugned order would show that the Court below has not accepted the oral assertion of the appellant that he is actually resident of Village Kotla Shahia, Post Office Bhullar, Tehsil Batala, District Gurdaspur and not village Kotha Sahib, Tehsil Batala, District Gurdaspur, which was the address given in the claim petition. Except for his oral statement, no documentary evidence has been brought on record, which

would indicate that he was in fact a resident of the said village. Apart from this reason, the Court below has also relied upon the facts and circumstances as depicted from the proceedings, as there were two Motor Accident Claim Cases filed against the appellant, which arise from the same accident dated 25.06.2002. In one of the claim petitions, the appellant had been appearing as a respondent. Both the cases were clubbed together by the Court vide order dated 06.06.2005 and evidence in both the cases was recorded in Claim Petition No.5 of 2003 in which, as per the assertion of counsel for the appellant, he had been proceeded against exparte. It would, however, not be out of way to mention here that the evidence was led by both the parties in the said claim petition. The award dated 03.02.2007 passed by the Tribunal is a joint award, deciding both the claim petitions together. The Court has, therefore, rightly proceeded to hold that it cannot be accepted that the appellant was not aware of the present claim petition, especially when the evidence was being recorded in Claim Petition No.5.

Counsel for the appellant asserts that he has already been proceeded against exparte on 03.11.2004 whereas the clubbing up of these two cases was on 06.06.2005 but that would not make any difference as the question which need to be decided is whether appellant-respondent No.2 was aware of the proceedings, which were going on against him in the claim petitions.

Another argument, which has been raised, is that counsel for respondent No.2, in claim petition No.5A, has expired before the clubbing of these two cases but he has not been proceeded against exparte in the said case.

This again would not make much difference as in the present

case the only aspect, which has to be dealt with, is with regard to he being aware of the proceedings going on against him, which, according to the findings recorded by the Court below on the appreciation of evidence, indicate that he was well aware. The impugned order, therefore, cannot be said to be not in accordance with law, which would call for any interference by this Court.

In view of the above, there is no merit in the present appeal and the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.21963 CII of 2015, for staying the operation of the impugned order dated 11.08.2015, is also dismissed.

November 02, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE