IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.492 of 2007 (O&M)
Date of Decision: September 28th, 2016

Gulab Singh

...Petitioner

Versus

Dharambir & others

...Respondents

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

Present: Mr.N.S.Shekhawat, Advocate,
for the petitioner.

Mr.Vipin Yadav, Advocate,
for respondent Nos.3 to 7.

Mr.Rohit Goswami, Advocate for
Mr.Vinod Chaudhri, Advocate,
for respondent No.2.

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**AMIT RAWAL, J. (Oral)**

Petitioner-owner is aggrieved of the impugned order, whereby the application moved under Order 9 Rule 13 CPC for setting aside the *ex-parte* award dated 1.4.2004 rendered by the Motor Accident Claims, Tribunal, Narnaul and as well as setting-aside the *ex-parte* proceedings dated 15.5.2003, has been dismissed.

Mr.N.S.Shekhawat, learned counsel for the petitioner-owner submits that the truck involved in the accident is owned by the petitioner and insured with the Oriental Insurance Company Limited-respondent No.3 (in claim petition). The petitioner employed Dharambir as driver, who had a valid driving licence. The aforementioned truck met with an accident on 30.9.2002, resulting into death of Karan Singh. A claim petition was filed

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on 24.10.2002. Simultaneously, the driver also faced the criminal proceedings under Section 304-A IPC, in essence FIR under the aforementioned provisions was registered. He received the summons of the MACT case on 26.4.2003 and as per the summons, he was to appear in the Court on 15.5.2003, but as pointed out by the other side, was proceeded *ex-parte* on 10.4.2003. The ex-parte award came to be passed on 1.4.2004, whereby amount of ₹10,80,500/- along with 9% interest has been awarded and the recovery rights have been given to the Insurance Company on the premise that photo copy of the driving licence produced on record by the Ahlmad summoned from the Criminal Court was held to be not genuine. The FDRs have already been deposited in the account of the L.Rs of the deceased. Now the only dispute is with regard to the recovery rights given to the Insurance Company. The petitioner acquired the knowledge of the *ex-parte* award on receipt of the notice of the execution proceedings on 27.4.2004 and thereafter filed the appeal before this Court bearing FAO No.2303 of 2004 and the same was dismissed as withdrawn on 9.5.2005 with liberty to approach the Tribunal for setting-aside the *ex-parte* award. It is in this backdrop of the matter, application under Order 9 Rule 13 CPC was filed on 16.7.2005, but the Courts below have dismissed the same on the ground that the contention raised in the application was not *bonafide.* He submits that in case the petitioner is given effective opportunity to prove the genuineness of the licence, no prejudice shall be caused to the claimants, whose rights have already been determined and taken care of in view of the compliance of the award by the Insurance Company subject to any terms and conditions which this Court deem it appropriate.

Per-contra, Mr.Vipin Yadav, learned counsel for respondent

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Nos.3 to 7-claimants submits that this Court, while issuing notice of motion on 29.2.2007, stayed the execution of the award qua Insurance Company subject to deposit of ₹1.00 lac, but the same has not been deposited, therefore, there was no stay, but yet the Executing Court is not ordering for the refund of the amount, though the minors have become major.

Mr.Vinod Chaudhri, learned counsel for respondent No.2 submits that the orders under challenge are perfectly legal and justified. The absence of the petitioner had been intentional and willful and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that since the Insurance Company, as per the statement of the counsel, has already deposited the aforementioned amount in the names of the minors and as well as widow, the claimants shall be at liberty to seek the refund of the amount in case the minor children have become major in accordance with law, but the fact remains that petitioner-owner should be given an effective opportunity to prove the genuinity of the driving licence held by Dharambir at the time when the vehicle met with an accident. The Insurance Company shall also be at liberty to prove the genuinity or otherwise in accordance with law.

Accordingly, the impugned orders are set-aside subject to payment of ₹1.00 lac, which was ordered to be deposited while issuing notice of motion and another sum of ₹25,000/- as a penalty of not depositing the same, much less not complying with the order mentioned above. The fight would be only between the Insurance Company and the owner. The costs, if deposited, shall be paid to the claimants against the valid receipt. The petitioner shall file written statement within a period of

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four weeks from the date of receipt of certified copy of the order. Rejoinder, if any, be filed within two weeks thereafter and then the Motor Accident Claims Tribunal afford 3-3 effective opportunities to the petitioner and the Insurance Company to prove their respective claims. The Tribunal shall consider the fact as to whether the Insurance Company is entitled to indemnify the owner or not within a period of six months thereafter. The claimants are also held entitled to seek the withdrawal of the aforementioned amount in view of the facts stated above in accordance with law. The costs shall be condition precedent. In case the costs is not paid, the orders under challenge shall be deemed to have been affirmed.

With the above observations, revision petition stands disposed of.

**September 28th, 2016** **( AMIT RAWAL )**
**ramesh** **JUDGE**

**Whether speaking/reasoned** **Yes/No**

**Whether Reportable:** **Yes/No**

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