

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

RSA No.658 of 1988 (O&M)

Date of decision:16.11.2016

Life Insurance Company

... Appellant

Vs.

Santosh Kumari Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Prateek Mahajan, Advocate
for the appellant.

Amit Rawal, J.(Oral)

The appellant-defendant is aggrieved of the judgment and decree dated 10.10.1987 rendered by the Lower Appellate Court, whereby, suit of the respondent-plaintiff for recovery of Rs.26,000/- containing the element of interest on the policy Nos.17290391, 13123810 and 26309748 of Double Accident Benefit of Rs.60,000/- @ 7.5% from 16.10.1975 i.e. the date of death to 31.12.1980, the date of releasing of the payment though has been dismissed by the trial court but partly decreed by the Lower Appellate Court by holding the suit of the respondent-plaintiff for the recovery of Rs.22,625/- in all with proportionate costs.

Learned counsel appearing on behalf of the appellant-defendant submits that Darshan Lal had obtained three life insurance policies and died on 16.10.1975 on account of the accident. The claim was rejected and civil suit was instituted, which was decreed by the trial Court vide judgment and

decree dated 07.01.1980 whereby the total benefit of accident i.e. Rs.60,000/- was decreed and payment was released on 31.12.1980 including the element of ex gratia.

The present suit had been filed on 22.03.1982 claiming the interest for aforesaid period as per the provisions of Section 34 of the Code of Civil Procedure. The trial Court dismissed the suit but the lower appellate Court partly decreed the suit as noticed above from the date of accident till the date of first decree dated 07.01.1980. He submits that the suit was prima facie barred under the provisions of Order 2 Rule 2 CPC, the plaintiff could claim the relief in the earlier round of litigation. In support of his contention he relies on judgment of Hon'ble Supreme Court in ***Commissioner of Income Tax, Bombay vs. T.P.Kumaran, 1996(4) SCT 287.***

This appeal stood admitted and notice was given time and again to the respondent but the respondent was not residing at the given address.

Learned counsel appearing for the appellant submits that no further address is available, therefore, fresh notice could not be issued to the respondent.

I have heard learned counsel for the appellant and appraised the judgments and decrees of both the Courts below and of the view that relief noticed above is barred under the provisions of Order 2 Rule 2 CPC.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the

ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 – 29]”.

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come

into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame substantial questions of law.

The Hon'ble Supreme Court in Commissioner of Income Tax, Bombay's case(supra) held that if the plaintiff/claimant had not claimed interest in his earlier suit, the second suit on the same cause of action is not maintainable being barred under Order 2 Rule 2 CPC.

For the reasons aforementioned, the findings rendered by the Lower Appellate Court are set aside. The suit of respondent-plaintiff is

dismissed. The judgment and decree of the trial Court is restored.

Resultantly, the Regular Second Appeal stands allowed.

(AMIT RAWAL)
JUDGE

16.11.2016
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| 1. Whether Speaking/Reasoned? | Yes/No |
| 2. Whether Reportable? | Yes/No |