

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

FAO-4959-2012 (O&M)

Date of decision: 13.5.2016

The New India Assurance Company Ltd.

...Appellant

Versus

Naveen Kumar Garg and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.LM Suri, Sr.Advocate with
Ms.Rajni Paul, Advocate for the appellant

Mr.JK Singla, Advocate for respondent No.1.

Respondent No.3 ex-parte

**

SNEH PRASHAR, J.

Assailing the award dated 7.6.2012 passed by learned Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal') in MACT No.23 dated 16.11.2011, the appellant- insurer of the offending vehicle involved in the accident filed the instant appeal.

The short ground on which the award has been challenged by the appellant -Insurance Company is that the claim petition No.23 dated 16.11.2011 filed by the claimant -respondent No.1- Naveen Kumar Garg was not maintainable as he had earlier filed a claim petition with regard to the same cause of action i.e. relating to the injuries suffered by him in the motor vehicular accident that took place on 18.1.2010, which was allowed by learned Tribunal and compensation was awarded. As a

result thereof, the second petition filed by the claimant was not maintainable in view of the provisions of Section 11 read with Order II Rule 2 of the Code of Civil Procedure (for short 'the Code').

The submissions made by Mr.L.M.Suri, Senior Advocate representing the appellant and Mr.JK Singla, Advocate for respondent No.1- claimant have been heard and record perused.

Learned counsel for the appellant argued that in the first claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') by claimant Naveen Kumar Garg, learned Tribunal granted him compensation to the tune of Rs.2,44,064/-. The said amount was paid to him by the appellant- Insurance Company and no appeal was preferred by the claimant impugning the award by either of the parties. The award passed by learned Tribunal had become final and therefore, the second claim petition on the same cause of action filed by the claimant -respondent No.1 was not maintainable. In support of his argument, learned counsel relied upon **Ashok Kumar Srivastav vs. National Insurance Company Ltd. and others (1998) 4 SCC 361, Ramjan Ali and another vs. Sunil Kumar and another 2016 ACJ 833 and Suresh Devi and others vs. Jasbir Singh and others 2015 ACJ 1283.**

Refuting the above arguments, learned counsel for the claimant-respondent No.1 submitted with vehemence that principle of res-judicata as defined under Section 11 of the Code of Civil Procedure (for short 'the Code') is not strictly applicable to a claim petition filed under the Act of 1988. Otherwise also, it is a benevolence legislation,

therefore, technical provisions of the Code are not strictly applicable to the proceedings before the Tribunal.

Admittedly, claimant Naveen Kumar Garg met with a road side accident on 18.1.2010. His allegation was that his motorcycle was hit by a car bearing registration No. CH-03A-9513 (for short 'the offending car'), which came from his back side and was being driven rashly, negligently and at a high speed and as a result thereof, he sustained multiple grievous injuries on various parts of the body. A First Information Report no.16 dated 19.1.2010 under Section 279/338 of the Indian Penal Code was registered in respect of the accident at Police Station City Sangrur. Invoking the provisions of Section 166 of the Act of 1988, Naveen Kumar Garg filed a petition bearing MACT No.8 of 10.3.2010 before the Motor Accident Claims Tribunal, Sangrur, which was decided on 21.10.2011 and compensation to the tune of Rs.2,44,064/- alongwith interest was awarded to him, which as stated by the appellant- Insurance Company was paid to him and none of the parties filed an appeal assailing the award.

Subsequently, the claimant filed another claim petition under Section 166 of the Act of 1988 on 16.11.2011. Respondents No.2 & 3 herein and the appellant- insurer (on having been impleaded as respondent No.3 in the petition) contested the petition raising all defences available to them under the Act of 1988. The appellant tendered in evidence copy of the award dated 21.2.2011 Ex.C-72 passed in earlier claim petition filed by claimant -Naveen Kumar Garg.

Learned Tribunal during discussion under issue No.1

noticed in para 11 of the award that the earlier claim petition filed by the claimant had already been decided on merits, yet erroneously and illegally proceeded to decide the second petition filed by the claimant on merits without discussing and deciding the objection regarding maintainability of the second petition raised by the appellant-Insurance Company.

The star question for determination before this Court is “whether the provisions of Section 11 read with Order II Rule 2 of the Code would operate as a bar to the second claim petition filed under the Act of 1988 when the first claim petition was allowed by learned Tribunal and was decided on merits”.

Section 11 of the Code postulates as under:-

“Res judicata:- No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly or substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.- Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree; question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

The principle of *res judicata* is procedural provision, which debars a court from exercising its jurisdiction to determine the *lis* if it has attained finality between the parties. The doctrine in substance means that an issue or a point decided and having attained finality should not be allowed to be reopened and reagitated twice over.

The literal meaning of *res* is “everything that may form an object of rights and includes an object, subject matter or status” and *res judicata* literally means “a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment”.

Section 11 of the Code engrafts this doctrine with a purpose that “a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.” Reliance in this context is placed on **Escorts Farms Ltd. Previously known as Escorts Farms (Ramgarh) Ltd. vs. Commissioner, Kumaon Division, Nainital, U.P. AIR 2004 SC 2186.**

Discussing applicability of the provisions of Section 11 of the Code i.e. the principles of *res judicata*, the Hon'ble Apex Court held in **Ashok Kumar Srivastav's case (supra):-**

“The basic idea in the rule of *res judicata* has sprouted from the maxim "*nemo debet bis vexari pro una at eadem causa*" (no man should be vexed twice over for the same cause). [In Y.B. Patil & ors vs. Y.L. Patil](#) [1976 (4) SCC 66] a three-Judge Bench of this Court considered the effect of a decision rendered in a writ petition at subsequent stages of the same *lis*. It held :

" The principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."

There are no two thoughts on the point that the Act of 1988 is a benevolence legislation, therefore technical provisions of the Code are not strictly applicable to the proceedings before the Tribunal but the procedural provisions cannot be ignored. The question here is maintainability itself of the second petition after the first claim petition filed on the same cause of action had been allowed on merits.

In **Ramjan Alia and another's case (supra)**, the claimants had earlier filed a claim petition under Section 166 of the Act of 1988, which was withdrawn and a fresh petition under Section 163A of the Act of 1988 was filed. Determining the maintainability of the second petition, it was held by this Court that if a petition was filed under Section 166 of the Act of 1988 and had been withdrawn, a fresh petition under the same very provision could be a bar, but there could be no bar to a petition under Section 163A of the Act of 1988, which dispenses with proof of negligence and determines compensation on structured formula mentioned in the Second Schedule of the Act of 1988.

In **Suresh Devi and others' case (supra)**, this Court held that dismissal of a claim petition otherwise than on merits is not a bar to file a fresh claim petition. It was further held that the provisions of Order XXIII Rule 1 of the Code are not applicable to the proceedings

before the Tribunal.

This Court in **Kuldeep Kaur vs. Kanwaldeep Singh, FAO No.1977 of 2010** decided on 10.11.2010 has observed that if the merits of the claim cannot be attacked, the technical plea of abandonment of a case by taking a permission for filing a petition before another Tribunal cannot be allowed and would not bar a fresh petition.

The genesis of the law discussed above is that when a claim petition is dismissed in default or is withdrawn with a permission to file fresh one before the same Tribunal or before some other Tribunal or on some other ground and had not been dismissed or allowed on merits, filing a fresh claim petition is not a bar, but the settled proposition of law is that when a claim petition is dismissed or allowed on merits, it would bar filing of a fresh claim petition on the same cause of action.

The argument of learned counsel for respondent No.1-claimant that since he had undergone surgery for removal of iron rod and plates inserted in his thigh, he had filed the second claim petition, therefore, it was maintainable, is completely devoid of merit. If at all, the claimant required future surgery or medication etc., he should have produced the required medical evidence during trial of his first claim petition, so that he could claim future medical expenditure to be incurred on his treatment. If the pleas he could have raised in his earlier petition were omitted, he was estopped from raising the same subsequently under Order II Rule 2 of the Code, which provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his

claim in order to bring the suit within the jurisdiction of any Court. In case on such ground, filing of a fresh claim petition is allowed, there would never be an end to the litigation.

The proposition of law laid down by Hon'ble Apex Court in **State Bank of India vs. Gracure Pharmaceuticals Ltd. (2014) 3 SCC 595** is that Order II Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Further it is held that the object of Order II Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order II Rule 2 CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits.

Thus, it is held that since the first claim petition filed by claimant/ respondent No.1 was decided on merits between the parties and he had even received the compensation amount awarded to him, the second claim petition filed by him on the same cause of action was not maintainable under the law.

As a consequence to the above discussion, the award passed by learned Tribunal is set aside and the claim petition of claimant-respondent No.1 is dismissed.

The appeal is accordingly allowed.

13.5.2016
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No