

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CR No. 3525 of 2017

Date of decision : August 04, 2017

* * * * *

National Insurance Company Ltd., Chandigarh

.....Petitioner

Versus

Smt. Rupinder Kaur and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Sandeep Suri, Advocate for the petitioner.

* * * * *

RITU BAHRI, J.

Present revision petition has been filed under Article 227 of the Constitution for setting aside the order dated 6.12.2016 passed by the Additional District Judge, Gurdaspur, whereby the application under Order 9 Rule 13 CPC filed by the petitioner for setting aside the ex-parte award/judgment dated 1.11.2011 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal') was dismissed.

Briefly stated, the facts of the case are that on 2.8.2010, at about 5 PM, the deceased Jasjeet Singh was going towards Village Kohlian from Gurdaspur along with Dilbagh Singh son of Hardial Singh resident of Krishna Nagar Camp, Dina Nagar, Tehsil and District Gurdaspur in Maruti

Car bearing No.PB-07-S-0973 being driven by him on his correct side. When they reached at railway gate No. C-59 on Gurdaspur- Dina Nagar railway line, there were bushes and trees etc. and quite grown up sugarcane crops on both sides of the road and as such the deceased could not take notice of rail engine and his car struck into the rail engine. As a result of this accident, Jasjit Singh and Dilbagh Singh sustained grievous injuries. Jasjit Singh died at the spot. Car was also badly damaged. A criminal case under Sections 279/304-A/337/338 IPC was registered at Police Station GRP Pathankot vide FIR No. 23 dated 02/08/2010.

Rupinder Kaur, widow of Jasjit Singh and Gurkirpal Singh and Anmolpreet Kaur, his minor children filed claim petition under Section 163-A of the Motor Vehicles Act for grant of compensation on account of death of Jasjit Singh in a motor vehicular accident.

In the claim petition none appeared on behalf of the respondents despite service through publication in daily Chardikala, Patiala, as such, the respondents were proceeded against ex parte vide order dated 6.4.2011.

The Tribunal after going through the evidence returned a finding that the vehicle was insured as per Ex. C-3, the insurance policy as per which the Maruti Car bearing No. PB-07-S-0973 was insured with National Insurance Company. The income of the deceased was assessed as Rs.3300/- per month. Out of the said amount 1/3rd was deducted towards his personal expenses and as such the monthly contribution to the family came out to Rs.2200/- per month. Thus, the annual contribution to the family came out to be Rs.26,400/- (Rs.2200/- x 12= Rs.26,400). Multiplier of 13 was applied to it and in this way the claimants were held entitled to a

total compensation of Rs.3, 43,200/- in equal shares against the respondents under their joint and several liability vide award dated 1.11.2011.

After passing of the award dated 1.11.2011, the Insurance Company made an application under Order 9 Rule 13 CPC for setting aside the ex parte award dated 1.11.2011. This application has been dismissed by order dated 6.12.2016 which is now under challenge in the present revision petition.

Counsel for the Insurance Company has argued that they had no notice of the claim petition actually and, therefore, they were proceeded ex parte. The service could not be effected as there was no branch office at Dasua, District Hoshiarpur. This aspect has been considered by the Tribunal while deciding issue no.1 wherein, it has been observed that the vehicle had been insured at the branch office Dasua, District Hoshiarpur. However, no evidence was led to show that there was only one office at Mukerian and no office at Dasua, District Hoshiarpur. Notice to the respondents was ordered to be issued for 02.02.2011. On 2.2.2011, the Presiding Officer observed that service upon respondents could not be effected in an ordinary course, therefore, the respondents were ordered to be summoned through publication in daily Chardikala Newspaper for 23.2.2011. On 23.2.2011, the publication was again ordered to be issued for 6.4.2011, on which date the publication was effected and it is at this stage they were proceeded ex parte and award was passed on 1.11.2011. Moreover the applicant did not file the application under Order 9 Rule 13 CPC within limitation period even from the date of assuming knowledge. After considering all the above mentioned facts, the application under Order 9 Rule 13 CPC has been dismissed by the Additional District Judge,

Gurdaspur. A perusal of the order of the Tribunal shows that the vehicle in question had been insured from the Branch Office at Dasua and hence the plea of the Insurance Company that they could not be served as there was no office at Dasua has been rightly rejected. Moreover, service through publication was effected on 6.4.2011. Hence the application under Order 9 Rule 13 CPC for setting aside the ex parte order has been rightly dismissed.

In view of all that has been discussed above, there is no infirmity or illegality in the orders passed by the Courts below that warrant interference of this Court. Present revision petition is hereby dismissed

August 04, 2017

ritu

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No