IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.256 of 1999 (O&M)
Date of Decision: 31.07.2017

Bhupinder Kumar Sharma

..Appellant(s)

Versus

Tilak Raj and others

..Respondent(s)

with

FAO No.290 of 1999 (O&M)

National Insurance Company Ltd.

..Appellant(s)

Versus

Bhupinder Kumar Sharma

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Shiv Kumar, Advocate
for the appellant in FAO-256-1999 and
for respondent no.1 in FAO-290-1999.

Mr. Neeraj Khanna, Advocate
for the appellant in FAO-290-1999 and
for respondent no.3 in FAO-256-1999.

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ANITA CHAUDHRY, J.

These are two appeals one filed by the claimant and the other by the insurance company against the award dated 30.07.1998, passed by the Motor Accident Claims Tribunal, Gurdaspur.

Bhupinder Kumar had suffered injuries in an accident which took place on 03.02.1990. He was going on his cycle from village Mamoon and had reached the railway crossing and was on Jallandhar - Dalhouse by-pass road. He claimed that a truck bearing registration no.PBW-8940 came from the opposite direction and hit his cycle and he fell down as he lost balance and the front wheel of the truck ran over his left leg causing crush injury on the thigh and leading to a fracture of the right side of the pelvis. It was claimed that son of Jagan Nath who was living near the railway crossing ran to help him and called his parents and informed them of the accident and he took the injured to the Military Hospital. A request was sent to the SHO, P.S. City Pathankot to register a case. It was pleaded that the claimant was on a temporary engagement with a doctor in Pathankot and was working as a typist with him. Prior to it he was serving the Command Officer of the Air Force as a Radio Technician and he was discharged from service and against his discharge he had filed a civil suit and during this period he was working with Dr. G.D. Sharma and he was getting a salary of Rs.1,500/- per month.

Respondents no.1 & 2 failed to appear and were proceeded ex parte. The insurance company took the plea that the facts were vague and incomplete and did not disclose the cause of action and the claim could not be filed before the Tribunal. It was also pleaded that the driver did not have a valid driving licence.

It was pleaded that the MACT Court had no jurisdiction to try the application and the driver did not have a valid licence and the insurance company was not liable.

Issues were framed on 30.09.1991 and the following facts were noted in the award, which would show the manner in which the trial had proceeded. It reads as under:-

> *"Issues in this case were framed on 30.09.1991 and then the case was adjourned for evidence of the claimant to 13.11.1991 on which date the Presiding officer was on leave and the case was adjourned to 5.12.1991 for proper order. On 5.12.1991 the case was adjourned to 15.1.1992 for evidence of the claimant. On that day no evidence of the claimant was present and the case was adjourned to 21.2.1992 for evidence of the claimant. On that day neither the claimant nor any one on his behalf was present, nor the respondent was present and as such the claim petition was dismissed in default. An application for its restoration was filed. On 28.05.1993 counsel for the applicant-claimant and Shri Pardip Kumar counsel for respondent no.3 were present and the petition was restored to its original number as application for its restoration was filed within limitation. Thereafter, the case was adjourned for evidence of the claimant. On 1.12.1994 none appeared on behalf of the respondent and as such respondent no.3 was also proceeded against ex-parte. On that day statement of claimant Bhupinder Kumar was recorded and then case was adjourned to 3.1.1995 for entire evidence of the*

claimant. On that day one witness was examined and case was adjourned to 23.1.1995 for evidence of the claimant, and then to 20.2.1995 and thereafter it was adjourned to 20.3.1995 for remaining evidence of the claimant. Later on this claim petition was dismissed in default for absence of the claimant on 6.9.1995 and application for its restoration was filed which was granted by me on 16.3.1998 and the claim petition was restored. On that day Shri Ashok Gupta counsel for respondent no.3 was present and this order of restoration was passed after hearing him. After the restoration of the claim petition on 16.3.98 this petition was adjourned to 26.3.1998 for evidence of the claimant. On that day two witnesses were examined by the claimant and he closed his evidence and the case was adjourned to 1.4.1998 for evidence of the respondent no.3.

On 1.4.1998 an application was filed on behalf of respondent no.3 Insurance Company for setting aside ex-parte proceedings against it. That application was dismissed vide order dated 15.4.1998 as the counsel for respondent Insurance Company had already been appearing on its behalf and the case was adjourned for evidence of the respondent Insurance Company for 22.4.1998. On that day counsel for Insurance Company respondent no.3 filed two applications one for recalling the witnesses of the claimant for cross-examination and the other for amendment of the written statement already filed. Those applications were dismissed vide detailed order dated 6.6.1998 by me."

The above reveals that the claimant had examined some witnesses but they were not cross-examined as the respondent had been proceed ex parte. The order dated 06.06.1998 is not available. Copy of it was not given by the claimant. The Tribunal after the restoration of the claim petition for the second time on 16.3.1998 gave adjournment of a week and disposed of the petition on 30.07.1998. There is a reference to the fact that there was an order by the High Court to expedite the trial. The manner in which the matter had been rushed clearly shows that principles of natural justice have been denied. The Tribunal ought to have given notice when the application for restoration of the claim petition had been filed at the first instance. There was no appearance on the next date and the insurance company was proceeded *ex parte*. It recorded the presence of a lawyer. As the record was burnt there is barely any material to find the correctness or otherwise. The order does not indicate that he was the lawyer who was representing the insurance company.

The claim petition had been filed in 1990 and issues had been framed in September 1991 but no evidence was led by the claimants till February 1992 and thereafter the claim petition was dismissed in default. It is not clear as to when the application for restoration was filed. The Tribunal recorded the presence of the counsel who was representing the insurance company and without giving an opportunity to file reply restored the claim petition and posted it for evidence. There was no appearance on behalf of the insurance company on the adjourned hearing and they were proceeded *ex parte* and evidence of the claimant was recorded and the case was adjourned a number of times and the claim petition was dismissed in default in the absence of the claimant on 06.09.1995. Three years later an application had been filed for restoration. The Tribunal instead of giving notice to the other side recorded the presence of a counsel present in the Court and ordered restoration for second time and examined two witnesses of the claimant on the adjourned hearing and posted the case for the evidence of respondent no.3. It is on that day that an application was moved by the insurance company for setting aside the ex parte order passed against them. When that application was dismissed two more applications were filed by the insurance company for recall of the witnesses so as to give them an opportunity for cross-examination and seeking amendment of the written statement since the investigator had found some important material which demolished the case of the claimant. Those applications were dismissed on 6.6.1998 and the Tribunal adjourned the case after vacations and disposed of the claim petition on 30.07.1998.

The counsel for the insurance company had urged that the manner in which the case had been rushed and opportunity denied to them tells a lot and they had come to know that the claimant had received injuries in a rail accident and in this regard two DDRs were entered and there is no FIR in this case nor any admission recorded nor the disability certificate was proved nor any medical officer examined or any record was summoned, which would give the history. The counsel had submitted that it was a fit case for remand and they may be allowed to join the proceedings and opportunity be given to them to cross-examine the witnesses and the claimant is a lawyer and was presenting the case himself, he too would get an opportunity to prove the manner of the accident when the facts presented are suspicious.

Two facts emerge from the little material made available by the claimant/appellant. The written statement on behalf of insurance company was filed by a lawyer who was allegedly not authorized. The insurance company was later proceeded *ex parte*. The written statement filed through the lawyer is not signed by the designated/authorised officer of the insurance company. It is, therefore, the insurance company filed an application for setting aside the *ex parte* order and sought permission to amend the written statement. The order vide which the application was dismissed is not available as record was burnt in the fire which occurred in 2011.

The claimant has not placed on record the copy of the application which he had filed seeking restoration of the claim petition. The restoration application had been filed after three years. The facts as they emerge show that the case set up by the appellant was that he had suffered injuries and was struck by a truck whereas the insurance company wanted to take a plea that the accident was with a railway engine. There is a reference to a DDR. There is also reference to the fact that the family of the appellant had been called and were present when he was shifted to another hospital but no material was summoned by the claimant. There is no FIR or any medical record. No doctor was examined to prove the disability. Therefore, it is a fit case which should be remanded from the stage of filing of written statement. The order vide which the application for amendment in the written statement was dismissed needs to be set aside and the insurance company is allowed to file the written statement. The evidence shall have to be led again as that would enable the claimant to lead evidence to prove that he had suffered injuries in an vehicular accident.

The manner in which the case had been decided in a haste has led to injustice to both the parties. The claim petition had been dismissed twice for non-prosecution and the Tribunal restored the claim petition without seeking any reply and then decided the matter within a span of 4 months. The order passed subsequent to the restoration are set aside and the matter is remanded for trial afresh and the trial would begun from the stage of the written statement. Parties are directed to appear before the District Judge, Gurdaspur on 20.09.2017 who would either keep the file in his Court or assign it to any other Court for expeditious disposal. The Court will give sufficient time to enable the insurance company to file written statement but only one date.

The Registry would send photocopies of all the documents which are available as the main file had been burnt in the fire. The Court would not be obliged to send any notice to the parties. The parties will have to appear on their own.

July 31, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No