

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

FAO 4839/2017

Date of decision:16.08.2017

Ashik Ali

.....Appellant

v.

Roziana and others

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Varun Katyal,Advocate for the appellant.

Jaswant Singh,J,(Oral).

Appellant-owner of motor cycle bearing registration No. HP 17-A-2792 has filed the instant appeal against the order dated 6.5.2017 passed by Motor Accident Claims Tribunal, whereby his application under Order 9 Rule 13 CPC for setting aside ex parte award dated 23.7.2011 has been dismissed.

The case set up by the appellant was that he received the summons in the claim petition requiring him to appear in the case on 5.9.2008. He approached Sh.Hamid Hussain,Advocate, who also happened to be his Mausa. After obtaining his signatures on various blank papers,Sh. Hamid Husain told the appellant that he need not attend the case on 5.9.2008 so appellant having immense faith on him relied on his word. It was further averred in the application that

appellant kept on inquiring about the status of the case and Sh.Hamid Hussain made him understand that the cases were pending and as and when the need would arise, appellant would be called at Panchkula. Somewhere on or about 8.3.2014 appellant received summons and a copy of the execution petition from the tribunal and thereafter he contacted a lawyer at Nahan, who apprised him that the claim petition was decided by the Tribunal on 23.7.2011 and he was proceeded against ex parte. Enquiries made later on revealed that initially one Balak Ram, Advocate entered appearance on behalf of the appellant and sought time to file reply. But on 15.10.2008 said Balak Ram Advocate also did not appear and the appellant was ordered to be proceeded against ex parte. The appellant denied that he ever knew or engaged Balak Ram and his blank signed papers have been misused by Sh.Hamid Hussain, Advocate.

Notice of the application was given to opposite side and on the pleadings of the parties, issues were framed.

The learned MACT Panchkula, after going through the evidence on record has noticed that if Sh.Hamid Hussain, Advocate being his relative committed breach of trust, then why appellant had not met Sh.Hamid Hussain, Advocate and Sh.Balak Ram Advocate, who filed vakalatnama on his behalf. The learned Tribunal found that this fact made clear that appellant deliberately remained absent from the proceedings during the pendency of the same and when the award went against him, he concocted the story by filing application under

order 9 Rule 13 CPC. Further it was noticed that the appellant did not bother to examine Sh.Balak Ram, Advocate who had filed power of attorney on behalf of the appellant. Thus, it was found proved that appellant was introduced to lawyers Balak Ram and Subhash Chaudhary, Advocate who filed power of attorney on behalf of the appellant but failed to file written statement and ultimately appellant was proceeded against ex parte. Applicant is found to have admitted that he was knowing about the pendency of the claim petition from the very beginning but despite that he did not bother to watch the proceedings and when result of the award went against him he moved the application concocting the story.

Even at the time of hearing of hearing of the present appeal, to a pointed query, learned counsel for the appellant has failed to show that appellant has initiated any kind of action against the erring counsel named in the application. This lends credence to the finding of the learned tribunal that the entire story has been concocted by the appellant and if that is accepted the same would amount to grave injustice to the claimant.

Dismissed.

16.08.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No