

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

Date of decision: 18.12.2018

FAO No.2407 of 2016 (O&M)

Surinder Pal Singh

... Appellant

Versus

Nachhatro Devi

... Respondent

FAO No.10368 of 2014 (O&M)

Nachhatro Devi

... Appellant

Versus

Surinder Pal Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Dinesh K. Prajapati, Advocate
for the claimant.

Mr. Vivek Lamba, Advocate
for the owner.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.10368 of 2014 and 2407 of 2016 as these have emerged out of the same proceedings pertaining to grant of compensation on account of death of Poonam in a motor vehicular accident that allegedly took place on 28.01.2013.

FAO No.10368 of 2014 has been filed by Nachhatro Devi, claimant seeking enhancement of compensation on account of death of

Poonam whereas the other appeal has been preferred by registered owner of the vehicle against order dated 25.02.2016 passed by the Motor Accidents Claims Tribunal, Ambala whereby application under Order 9 Rule 13 read with Section 151 CPC for setting aside ex parte award dated 06.08.2014 has been dismissed.

As the question of enhancement of compensation can be considered by the Court only if the appeal preferred by the registered owner is not allowed, thus, the appeal preferred by the registered owner would be decided first.

FAO No.2407 of 2016

The sole submission made by counsel for the appellant is that as the appellant was not personally served in the claim proceedings nor he ever refused to accept any notice sent by the Court, the ex parte proceedings against the appellant as well as ex parte award are liable to be set aside and the matter may be remitted to the Tribunal for decision of the claim application afresh after providing an opportunity of being heard to the appellant.

Counsel for the claimant/respondent, on the contrary, would argue that the appellant was aware of proceedings initiated by the police in view of report under Section 210 Cr.P.C., therefore, the appellant was aware of pendency of the claim proceedings and he voluntarily opted not to contest the claim, therefore, order impugned may be affirmed.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

The Tribunal, in para 4 of the impugned order, has assigned the reasons to conclude that it cannot be said that either summons were not duly served upon the applicant or he was prevented by any sufficient cause from appearing in the case when called for hearing. The Court has noticed that the appellant refused to accept registered envelope containing summons and he was proceeded against ex parte vide order dated 16.04.2014. Counsel for the respondent, in response to a query, would fairly inform that no witness was examined by the respondent to prove the report of refusal on registered envelope that has been taken into consideration by the Tribunal for initiating ex parte proceedings vide order dated 16.04.2014 and dismissing the application for setting ex parte award. In absence of evidence by the respondent that the registered envelope containing summons was actually tendered to the appellant and he refused to accept the same, it is difficult to affirm findings that either the appellant was duly served in the case or he intentionally kept himself away from the proceedings at the risk and cost of an award being made for payment of compensation. In this view of the matter, it can safely be held that order impugned suffers from serious error rather illegality and liable to be set aside. As a natural corollary, order dated 16.04.2014 initiating ex parte proceedings against the appellant and ex parte award are liable to be set

aside and the matter needs remittance to the Tribunal for decision of the case afresh after providing an opportunity to file written statement by the appellant and thereafter to proceed with the case, in accordance with law.

In view of what has been discussed hereinabove, the appeal is allowed; the application filed by the appellant for setting aside ex parte award dated 06.08.2014 is allowed; the appellant is allowed to join the proceedings of MACP/19/2014 titled 'Nachhatro Devi Vs. Surinder Pal Singh and others' from the stage he was proceeded against ex parte. Parties through their counsel are directed to appear before the Tribunal on 11.01.2019. The Tribunal is directed to dispose of the matter within three months of the parties putting in appearance. It is clarified that neither the claimant nor the appellant would wait for fresh notice from the Tribunal.

FAO No.10368 of 2014

In view of order of even date passed in FAO No.2407 of 2016, the appeal has been rendered infructuous and is disposed of accordingly.

18.12.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No