

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

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FAO No.5783 of 2013 (O&M)

Date of decision: 30.07.2018

DHUPU & ANR

... Appellants

Versus

HANS RAJ & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajesh Lamba, Advocate for the appellants.

None for the claimants.

Mr. D.K. Prajapati, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 30.04.2013 passed by the Motor Accidents Claims Tribunal, Nuh at Mewat whereby compensation has been awarded on account of death of Raj Kumar in a motor vehicular accident that took place on 19.10.2010.

The Tribunal has assessed compensation of Rs.8,67,500/- and liability to pay compensation has been fastened against the registered owner and driver of offending vehicle, LP truck No.HR-55D-0227.

Counsel for the appellants would urge that the application for compensation was filed on 15.12.2010 wherein the appellants (respondents No.1 and 2 therein) caused appearance and filed the written statement but later proceeded against ex parte on 17.08.2012. Subsequent thereto, on 28.08.2012, the application for compensation was dismissed for non-prosecution but the same was restored on an application filed by the claimants. It is argued with vehemence that as the Tribunal did not issue a notice to the appellants either of the application for restoration of the claim application or after the application was restored, the award passed by the Tribunal may be set aside with an opportunity to the appellants to contest

the proceedings from the stage, the application was dismissed for non-prosecution on 28.08.2012.

There is no representation on behalf of respondents No.1 to 4 (claimants before the Tribunal).

Counsel representing the insurance company would urge that once the appellants opted to be absent from the proceedings and were proceeded against ex parte on 17.08.2012 prior to the application being dismissed for non-prosecution on 28.08.2012, they are not entitled to any notice in the application for restoration or to be heard on merits of the petition for compensation.

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

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that appeal against respondent No.3-Anita, widow of Sh. Raj Kumar has been dismissed by this Court on 17.11.2017. A relevant extract from order dated 17.11.2017 reads as follows:-

“The appellants have failed to furnish correct address of respondent No.3 since 27.10.2014. On 18.05.2017, order passed by this Court reads as follows:-

“Learned counsel for the appellants prays for more time to furnish fresh addresses to effect service on respondent No.3 within 10 days, failing which, this appeal shall be deemed to be dismissed for non-prosecution.

Adjourned to 17.11.2017.”

As counsel for the appellants has failed to comply with orders of this Court to furnish correct address of respondent No.3, there is no option except to dismiss the appeal against respondent No.3. The Registry is directed to make necessary endorsement on memo of parties. Adverse affect of dismissal of appeal against respondent No.3 qua other respondents would be seen at the time of disposal of the appeal on merits.

Adjourned to 01.03.2018.”

As interest of Anita is common with the other claimants, contention of the appellants for setting aside the award and remittance of case to the Tribunal for decision afresh is not sustainable. This apart, once the appellants absented from the proceedings and were proceeded against ex parte, any proceedings conducted by the Tribunal subsequent in point of

time including decision on application for restoration of the claim application would not entitle the appellants to have a notice from the Court for being heard in the matter. In this view of the matter, the appeal sans merit and liable to be dismissed.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

No order as to costs.

30.07.2018
ashok

(REKHA MITTAL)
JUDGE

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