IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

104 CR No.4930 of 2017
Date of decision:8.4.2019

Neetu Chadda and others

... Petitioners

versus

Pardeep Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Shakti Mehta, Advocate,
for the petitioners
Mr.R.C.Kapoor, Advocate,
for respondent no.3
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioners challenge the orders of the learned Motor Accident Claims Tribunal, Panchkula, dated 11.7.2017 and 26.4.2017, Annexures P-5 and P-19 respectively.

Vide the order dated 26.4.2017, the evidence of the petitioners (claimants before the Tribunal), was closed on a statement made by their counsel. Thereafter they moved an application before the Tribunal for recalling PW6, who is seen to be a Tax Assistant from the Income Tax Office of Ward no.5, Sector 2, Panchkula. Recalling was sought on the ground that the said witness, when he had earlier deposed on 21.7.2017, had not brought the income tax returns of the deceased person (for the death of whom compensation was being claimed), for the assessment years 2015-16 and 2016-17.

The said application was dismissed vide the order Annexure P-5, on the ground that issues had been framed in the claim petition on 30.9.2016, with the claimants having availed as many as 8 opportunities to conclude their evidence, including 6 'last opportunities'.

It was further noticed that on 26.4.2017 their counsel had closed evidence by suffering a statement to that effect and therefore, with PW6 having been examined to the full satisfaction of the claimants, with no 'effort made for deferment of his statement', the application could not be allowed.

Hence, it was dismissed.

2. Learned counsel for the petitioners submits that though the aforesaid income tax returns had admittedly been filed online even as per the deposition of the said witness (copy Annexure P-2), however he had further stated that the record thereof was not available, (seemingly referring to the physical copies of the returns, because he had admitted that online returns had been filed, with tax also duly remitted).

3. Mr.Kapoor, learned counsel for the insurance company, has opposed the petition on the ground that the income tax returns which are now sought to be led by way of evidence on behalf of the petitioner-claimants, were filed actually after the deceased had passed away, with the said statements stated to be showing almost double the income that was shown in the returns filed prior to his death.

4. Having considered the aforesaid arguments, as regards recalling the aforesaid witness, i.e. PW6, I would be inclined to allow the petition because a department official who comes and makes a statement that he

does not have the record of the returns filed, even though they had been filed online, naturally it is not the fault of the claimants that those returns could not be proved; though of course the learned Tribunal was correct in observing that a deferment should have been sought at the stage when he was examined itself, instead of moving an application after counsel had closed evidence.

Even so, the filing of the returns online not having been denied by the aforesaid witness, this petition is allowed, with the learned Tribunal directed to summon the said witness if he does not appear on the request of the petitioners, but with it made absolutely clear that this Court is not making any comment on the admissibility of the said returns as proof of income of the deceased, which would be gone into by the Tribunal itself.

With the aforesaid observation, this petition is allowed and the impugned orders are set aside, with one effective opportunity granted to examine the said witness, with the Tribunal to issue summons to him upon any application made for that purpose by the petitioners-claimants.

8.4.2019 **(AMOL RATTAN SINGH)**
pk **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No