

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5257 of 2015 (O&M)

Date of Decision:24.9.2019

Sunil Kumar and another

---Appellants

vs.

New India Assurance Company Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Parminder Singh, Advocate
for the appellants

Mr. Paul S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the respondent-insurance company

Rekha Mittal, J.
CM No. 16456-CII of 2015

Prayer in this application is for condoning delay of 879 days in filing the appeal.

In view of averments made in the application supported by an affidavit of Krishan Kumar Gera, appellant No. 2 and arguments advanced by counsel for the applicants, application is allowed and delay of 879 days in filing the appeal stands condoned.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against award dated 14.12.2012 passed by the Motor Accidents Claims Tribunal, Karnal

(in short “the Tribunal”) and order dated 9.7.2015 passed by the Tribunal whereby application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (in short “the Code”) for setting aside ex parte order dated 10.10.2012 and ex parte award dated 14.12.2012 was dismissed.

Counsel for the appellants would argue that claim preferred by Ganeshi Devi and others with regard to death of Randhir @ Dhira in a motor vehicular accident that took place on 1.1.2011 due to rash and negligent driving of alleged offending vehicle i.e. Hydraulic Crane bearing No. HR-45-A-2330 was partly allowed by the Tribunal on 14.12.2012. The appellants being driver and owner of offending vehicle joined the proceedings and filed their joint written statement. However, on 10.10.2012 counsel for the appellants did not appear in the case and appellants were proceeded against ex parte and eventually the ex parte award dated 14.12.2012 was passed against them and in view thereof, the insurance company is given right of recovery against appellant No. 2 on the basis of findings on issues No. 3 and 4. It is argued with vehemence that the appellants should not be allowed to suffer because of failure of their counsel to appear in the court on 10.10.2012 when otherwise it has been proved on record that Krishan Kumar Gera appellant No. 2 was unwell on 10.10.2012 and he was under treatment of Dr. Satish Midha examined as PW2 and documents in this regard have been marked as Exs. A1, AW2/1, AW2/2 and AW2/3.

Another submission made by counsel is that along with the application for setting aside ex parte award, photocopies of documents namely driving licence of Sunil Kumar and registration certificate of vehicle

No. HR-45-A 2330 marked as 'A' and 'B' were produced. It is further submitted that appellants filed an application under Order 41 Rule 27 read with Section 151 of the Code seeking permission to produce copy of driving licence of Sunil Kumar and registration certificate of the vehicle annexures A1 and A2. It is argued with vehemence that a serious prejudice shall be caused to the appellants in case recovery right given in favour of the insurance company is allowed to sustain despite the vehicle being duly insured and Sunil Kumar driver having a valid licence. In addition, it is argued that the Tribunal has allowed recovery right in favour of the insurer on the question of driving licence and route permit but non-possessioning of route permit is not a defence available to the insurer.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal in award dated 14.12.2012 as well as rejecting application for setting aside ex parte order dated 10.10.2012 and ex parte award dated 14.12.2012. However, he has fairly conceded that on verification of licence sought to be produced by way of additional evidence, the same has been found to be valid.

I have heard counsel for the parties, perused the paper book and record.

Indisputably, the appellants being driver and owner of offending vehicle contested the proceedings before the Tribunal which were initiated in the year 2010. They remained attending to the proceedings through a counsel till 10.10.2012 but unfortunately they were proceeded against ex parte as their counsel failed to cause appearance on 10.10.2012 and thereafter did not bother to file an application for setting aside ex parte

proceedings till the claim application culminated in award dated 14.12.2012 on the basis whereof claim of Ganeshi and others was partly accepted and they were awarded compensation to the tune of Rs. 3,80,000/- along with interest but the insurance company was left at liberty to recover compensation from the insured on the basis of findings recorded on issues No. 3 and 4. Counsel for the insurance company has shown grace by conceding that driving licence possessed by Sunil Kumar was found to be genuine. The Tribunal has allowed recovery right in favour of the insurer on the premise of driving licence and route permit though the insurance company had raised a plea in respect of permit. Findings of the Tribunal allowing recovery right for want of route permit cannot be allowed to sustain as no such defence is available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short "the Act"). Since licence possessed by driver has been found to be genuine and valid, it would be travesty of justice in case ex parte award to the extent of allowing recovery right against the insured is allowed to sustain in the given circumstances. I would hasten to add that application for setting aside ex parte award was filed on 21.1.2013. No prejudice shall be caused to the claimants in case findings of the Tribunal on issues No. 3 and 4 are set aside and the matter is remitted to the Tribunal for deciding those issues afresh by hearing the appellants and insurance company afresh. In this view of the matter, the appeal is allowed. Ex parte award dated 14.12.2012 is set aside only to the extent of findings of the Tribunal on issues No. 3 and 4. The matter is remitted to the Tribunal for deciding issues No. 3 and 4 afresh in respect of driving licence and permit and not route permit.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The ex parte award passed by the Tribunal is set aside only in respect of its findings on issues No. 3 and 4. The Tribunal shall decide issues No. 3 and 4 afresh. The appellants would be at liberty to place on record photocopy of driving licence. The Tribunal shall decide if the vehicle in question required a permit, in view of provisions of Section 66 of the Act and what is the effect of non-possessing of permit by the registered owner. The parties through their counsel are directed to appear before the Tribunal on 16.10.2019. The Tribunal shall not bother the claimants to appear in the court as controversy involved in issues No. 3 and 4 is inter se the insured and insurer.

(Rekha Mittal)
Judge

24.9.2019
paramjit

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