IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 25.07.2019

FAO No.4719 of 2017 (O&M)

Paramjit Sahota ... Appellant

Versus

Harmesh Kumar and others ... Respondents

FAO No.5250 of 2017 (O&M)

Paramjit Sahota ... Appellant

Versus

Rajat and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Jatinderpal Singh, Advocate
for the appellant.

Mr. Jagatpal S. Banwait, Advocate
for the claimants.

Mr. Punit Jain, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4719 and 5250 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.4719 of 2017.

Challenge in the present appeal has been directed against award dated 13.09.2013 passed by the Motor Accidents Claims Tribunal, SBS Nagar whereby compensation has been assessed in respect of injuries sustained by Harmesh Kumar in a motor vehicular accident that took place on 20.11.2011 and liability to pay compensation has been fastened against driver and owner of offending vehicle whereas the insurance company M/s Cholamandlam General Insurance Co. Ltd. has been exonerated of liability to pay compensation as licence possessed by driver of the offending vehicle was held to be invalid.

Along with the appeal an application has been filed for condonation of delay of 1300 days in filing the appeal.

Counsel for the applicant-appellant would submit that the appellant was proceeded ex parte in claim proceedings vide order dated 22.03.2012 and there was no effective and proper service upon the applicant. He filed an application under Order 9 Rule 13 of the Code of Civil Procedure (in short 'the Code') but the same was dismissed by the Tribunal vide order dated 02.01.2017. Challenge to the order passed by the Tribunal in CR No.555 of 2017 did not find favour with this Court and the revision petition was dismissed vide order dated 19.04.2017. It is argued that since the applicant remained pursuing his remedy for setting aside the ex parte award and present appeal has been preferred after decision of aforesaid CR No.555 of 2017 by this Court, delay in filing the appeal may be condoned. It is further argued that the Court is required to adopt a liberal approach while dealing with an application for condonation of delay so that meritorious claim of a litigant is not thrown overboard on technical considerations.

Counsel representing the insurance company, on the contrary, has refuted contention of the applicant that there are sufficient grounds for condoning huge delay of 1300 days in filing the appeal. It is further argued that this Court while disposing of CR No.555 of 2017 along with connected cases filed by the applicant has noticed his irresponsible and unwarranted conduct and the same is sufficient to reject plea of the applicant for condonation of delay in exercise of discretionary jurisdiction of the Court.

On merits, counsel for the applicant-appellant would argue that merely because driver of offending vehicle did not have effective licence on the date of occurrence which was got renewed just few days after the accident on 20.11.2011, the same itself is not sufficient to uphold plea of the insurance company that the insured is guilty of violating the terms and conditions of policy that constitutes a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988. It is further argued that the Tribunal even did not frame a specific issue, if the insured is guilty of violating the terms and conditions of policy and as such, findings of the Tribunal on issue No.6 may be set aside and the matter be remitted to the Tribunal for adjudication of question of violation of policy conditions for want of valid or effective licence with the driver on the day of occurrence. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Ram Chandra Singh VS. Rajaram and ors., 2018(5) RCR (Civil) 381.**

To support his contention that the insured cannot be held guilty for breaching the terms and conditions of policy merely because the licence was found to be fake, he has relied upon judgments of Hon'ble the Supreme Court **National Insurance Co. Ltd. VS. Swaran Singh and ors., 2004(2) RCR (Civil) 114, Punam Devi and another VS. Divisional Manager, New India Assurance Co. Ltd., 2004(2) RCR (Civil) 236, Skindia Insurance Co. Ltd. VS. Kokilaben Chandravadan, 1987 AIR (SC) 1184** and **United India Insurance Co. Ltd. VS. Lehru and others, 2003(2) RCR (Civil) 278.** Further reference has been made to judgment of Delhi High Court **New India Assurance Co. Ltd. VS. Santoshi Devi W/o Lt. Sh. Bhure Lal and others, 2019(2) TAC 67.**

Counsel representing the insurance company, on the contrary, would urge that in case application for condonation of delay is not allowed, the applicant-appellant cannot be heard on merits of the case and appeal is liable to be dismissed being barred by limitation. It is further argued that once it has been proved that driver of offending vehicle was not duly licensed w.e.f. 01.07.2010 till the licence was renewed on 23.11.2011, in absence of the appellant's having pleaded and proved that he had taken reasonable care to ensure that driver was duly licensed, evidence on record is more than sufficient to prove that the insured is guilty of violating the terms and conditions of policy and the insurance company has rightly been exonerated of liability to pay compensation. In support of his contention, he has relied upon latest judgment of Hon'ble the Supreme Court **Singh Ram**

VS. Nirmala and ors., AIR 2018 (SC) 1290. It is submitted that in **Singh Ram's case (supra),** the accident took place on 22.03.2010. The driving licence issued by the Licensing Authority, Jagadhri for a tractor and car was valid only until 29.08.2009. The licence was renewed on 28.11.2011 more than two years after it had expired. The Court held that the appellant as owner has evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge. It is argued that even in the said case, the insured had not appeared in the witness box to explain his position in respect of driving licence as is the case of appellant Paramjit Sahota.

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

The applicant-appellant has sought condonation of inordinate delay of 1300 days in filing the appeal on the premise that earlier he had been pursuing his remedy for setting aside the ex parte award that culminated in order of dismissal by the Tribunal on 02.01.2017 and the revision petition preferred before this Court came to be dismissed on 19.04.2017. Indisputably, the award in this case was passed on 13.09.2013 and till date the applicant has not paid even a single penny to the claimants/injured who filed separate applications and were awarded compensation. This Court, while dismissing the revision petitions preferred in all the three cases wherein Rajat Kumar, Harmesh Kumar and Naresh Kumari were impleaded as respondents respectively has held, reads thus:-

This witness-RW1 also duly proved the summons signed by Palwinder Singh as Ex. R2. Further, RW1 was put to lengthy cross examination by learned counsel for the petitioner but nothing adverse could be elicited which may support the contention raised on behalf of the petitioner. Notice (Ex. R1) and report made thereon by the process server as Ex.R2 were duly proved on record.

Interestingly, petitioner in his statement claimed that he was having separate ration card from his son but the same was not produced in court for the reasons best known to him. This would amount to material concealment on the part of the petitioner, as he withheld the relevant document from the notice of this Court, for which adverse inference was liable to be drawn against him. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned order and the same deserves to be upheld.

Even if earlier delay from 22.3.2012 up to 20.9.2014 was to be ignored, there was not even an effort made on behalf of the petitioner to explain the delay of exactly one year, i.e. from 20.9.2014 to 21.9.2015. Despite having appeared on 20.9.2014 in the execution proceedings, petitioner applied for certified copy of award as late as on 25.8.2015, which shows malafide intention on his part, to cause maximum delay. He did not furnish any kind of explanation for this delay of one year. In view of the abovesaid undisputed position on record, petitioner cannot be permitted to draw any benefit out of his own wrong and negligent conduct.

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It was least expected from the petitioner that immediately after putting appearance on 20.9.2014 before the executing court, he would have wasted no time in filing the

> application under Order 9 Rule 13 CPC. However, he kept on sleeping like Kumbakarna and got up from his slumber after one year and then filed application under Order 9 Rule 13 CPC on 21.9.2015, as if he was not governed by any law of limitation. Then he took false plea before the court contending that he immediately applied for certified copy of ex parte award after coming to know about it. This plea was not only false but was also misleading, because he had already put appearance on 20.9.2014.
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> Such a litigant who does not have any respect for the truth and the law is also not entitled to the discretionary relief at the hands of any court of law. In this view of the matter, it can be safely concluded that the malafide intention and negligent conduct of the petitioner has rendered him completely disentitled for any kind of relief at the hands of this Court, as well.

Taking into consideration the aforesaid, it is highly difficult nay impossible to accept contention of the applicant-appellant that he merits indulgence of this Court in exercise of its discretion, for condoning inordinate delay of 1300 days in filing the appeal. As has been held by this Court while disposing of the civil revisions that there is no explanation for condoning delay of 1 year in filing the application under Order 9 Rule 13 of the Code despite appearance by the applicant in execution proceedings, the applicant cannot take advantage of that delay while seeking condonation of delay of 1300 days more particularly in the circumstances that till date the awards passed by the Tribunal in respect of injuries sustained by three claimants remain unexecuted. It appears that the applicant on one pretext or the other is trying to prolong agony of the claimants/award holders by taking recourse to different proceedings without proving his bona fides. This apart, there is no legal bar to file an appeal against an ex-pate award in addition to availing remedy for setting aside ex parte decree under Order 9 Rule 13 of the Code. Analysed from any angle, plea of the applicant to condone delay of 1300 days is not meritorious and accordingly rejected.

As has rightly been argued by counsel for the insurance company that once the application for condonation of delay is dismissed, the applicant/appellant is not entitle to be heard on merits of the case and appeal is liable to be dismissed being barred by limitation. But still this Court would advert to the submissions made by counsel for the appellant qua merits of the case.

Before adverting to the submissions made by counsel for the parties, it is appropriate to note that the Tribunal decided three claim applications filed by Harmesh Kumar, Rajat son of Harmesh Lal and Naresh Kumari, mother of Rajat and wife of Harmesh Lal. The applicant/appellant filed three applications under Order 9 Rule 13 of the Code for setting aside the awards passed in those cases that led to filing of three separate Civil Revisions No.554 to 556 of 2017 decided by this Court vide order dated 19.04.2017. There is nothing on record suggestive of the fact that the appellant has filed an appeal to challenge the award passed in favour of Naresh Kumari wherein the question of driving licence was also answered against the driver and owner of offending vehicle i.e. canter bearing No.PB-32-L-5923. That being so, findings of the Tribunal on the question of driving licence in the claim application filed by Naresh Kumari would constitute res judicata in the other cases arising out of the same occurrence.

Counsel for the appellant by relying upon judgment in **Ram Chandra Singh's case (supra)** made an attempt to argue that findings of the Tribunal on issue No.6 may be set aside and the matter be remitted to the Tribunal for deciding the said issue afresh by giving an opportunity to the parties to lead evidence in this regard. Firstly, this contention raised by counsel for the appellant smacks off malafide and is clearly an attempt to overreach the orders passed in the proceedings initiated under Order 9 Rule 13 of the Code for setting aside ex parte award. Counsel for the appellant despite knowing fully well about the observations made by this Court while disposing of the aforesaid civil revisions dared to make submissions by relying upon judgment in **Ram Chandra Singh's case (supra)** but without appreciating that in the said case, the insured had adduced oral evidence and stated that he had seen photocopy of the driving licence of Shivgyani and was also satisfied about his driving skills before employing him as driver for the vehicle in question. Hon'ble the Supreme Court, in para 12 of the judgment, has held that neither the Tribunal nor the High Court bothered to analyse the pleadings and evidence adduced by the parties on the crucial matter. The limited grievance of the appellant/owner of the vehicle is about unjustly absolving the insurer merely on the finding that driving licence of the driver was fake. In those circumstances, the Court deemed it appropriate to relegate the parties before the High Court for fresh consideration of the appeal only on the question of liability of the owner or of the insurer to pay compensation amount. Since in the present case, the present appellant did not bother to appear in the claim proceedings and opted to stay away, he cannot derive any advantage to his contention from the judgment in **Ram Chandra Singh's case (supra)**.

Hon'ble the Supreme Court in **Swaran Singh and others's case (supra)** has culled out the principles in the summary made in para No.105. In sub para (vii), the Court has held that the question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise) does not fulfil the requirements of law or not will have to be determined in each case. In **Punam Devi and another's case (supra)**, it was held in para 2 that the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time. In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that driver had no licence was open to the insurer which it failed to discharge.

However, in the case at hand, admittedly, licence possessed by the driver was valid upto 01.07.2010 which was got renewed from 23.11.2011 to 22.11.2014 as per endorsement Ex.R4. The Tribunal has noticed, in para 18 of the award, that Charanjit Singh was not having any driving licene at the time of accident. The appellant did not contest the claim proceedings before the Tribunal. The driver of offending vehicle did not appear in the witness box. Counsel representing him (the driver) before the Tribunal tendered into evidence copy of route permit, insurance policy, driving licence and entry of renewal qua driving licence. There is no material on record to prove as to since when Charanjit Singh was employed as driver to drive the offending vehicle. It is also anybody guess as to when the driver applied for renewal of licence on the basis whereof his licence was renewed w.e.f. 23.11.2011 after the occurrence on 20.11.2011. In absence of any such evidence, the appellant cannot derive any advantage to his contention from the fact that Charanjit Singh was either duly licensed upto 01.07.2010 or his licence was renewed w.e.f 23.11.2011 nor from the referred authorities. As an upshot of aforesaid discussion, it can be safely concluded that the appeal sans merit and deserves to be dismissed.

Indisputedly, the insurance company has been exonerated of liability to pay compensation solely on the ground that driver was not duly licensed on the day of occurrence. Till date, the claimants have not received any compensation in respect of occurrence of November, 2011 and passing of award in September, 2013. Taking a sympathetic view in the light of that provisions for compensation are benevolent social legislation, to safeguard interests of the claimants/injured victims, I exercise the reversional jurisdiction of this Court and modify findings of the Tribunal exonerating the insurance company of liability to pay compensation to the effect that insurance company shall discharge liability to pay compensation to the claimants but would be entitle to recover the same from the insured by filing appropriate application(s) before the Tribunal. At the same time, the applicant-appellant shall not be entitle to alienate his immovable property without permission of the Tribunal till recovery rights given to the insurance company are satisfied. The appellant shall furnish an undertaking before the Tribunal that he shall not alienate his immovable property without permission of the Tribunal, within a period of 25 days.

In view of what has been stated hereinbefore, the appeals stand disposed of.

25.07.2019 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No