HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No. 419/2009

Pronounced on : 16 .07. 2020

Liaqat Ali …. Appellant(s)

Through:- Mr. L. K. Sharma, Sr. Advocate with
Mr. Sheverit Khajuria, Advocate.

V/s

National Insurance Co. Ltd. and others …..Respondent(s)

Through:- Mr. Baldev Singh, Advocate for R-1.

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. This appeal is against the order dated 24.06.2009 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter to be referred to as 'Tribunal') dismissing the application for setting aside ex-parte award dated 08.11.2006 made by the said Court in claim petition No. 254/claims.

02. The appellant being the owner of the Truck bearing registration No. JKS-7044 involved in the accident which took place near Ramban on Jammu-Srinagar Highway, while on way from Jammu to Srinagar. The appellant was set ex-parte on 28.08.2003 and the said order reads as under:-

> "Respondent Nos. 2 and 3 have been served through registered covers the postal receipts of which are on file. More than one month time is over they have not appeared in the Tribunal and as such they are set ex-parte."

03. This order was passed while awarding Rs. 25,000/- on account of no fault liability under Motor Vehicle Act as the injured had suffered a permanent disability because of the accident because of the injury

sustained by him, as the vehicle was being driven by the Driver-Manzoor Ahmed in a rash and negligent manner by over speeding.

04. The Tribunal dismissed the application for setting aside ex-parte award by holding that the appellant was duly served but did not appear despite service through registered post.

05. Mr. L. K. Sharma, Senior Advocate has filed an application that this appeal may be treated as revision, to avoid the controversy about the maintainability of the appeal, but the Insurance Company has objected to the maintenance of the revision also in view of the amendment made in Section 115. However, in **M/s Pepsi Food Ltd. & others V. Special Judicial Magistrate & others, AIR 1998 SCC 129** it is held as under:

> "Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Cod. it may not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

06. Applying the ratio of the aforesaid judgment, this appeal is treated as a petition under Article 227 of the Constitution of India to find out whether the order impugned is legal or without justification.

07. The question is whether the Tribunal was justified in holding that the petitioner was duly served. The learned Tribunal in its order dated 24.06.2009 has reproduced Order 5 Rule 19-A CPC but without appreciating its mandate, it has held as under :-

> ".....The import of Order V Rule 19-A was roped in this case and the respondents were deemed to have been served U/S 114 and Sec.27 of General Clauses Act. The presumption was drawn by this Court that the summons have been served upon him......".

08. It is unfortunate that the Tribunal drew the presumption under law without verifying the facts from the record whether the summon was issued in the ordinary course and if so what was its report. The Tribunal also had to ensure that the registered envelope containing summons was sent on the proper address, before law of presumption could be drawn. There is no evidence that the summon was issued in the ordinary course as required under Rule-19-A of Order-V of CPC.

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09. Moreover, the address of the appellant is Narwal Bala which is a village, while Narwal is an area including fruit market and transport yard where many offices have sprung up. It was for the injured to provide the correct address. In the absence of which no presumption of service can be raised because on the receipt, the address given is only Narwal and not Narwal Bala.

10. There is no evidence that it was sent on the correct address. Even insurance policy has the address of the insured only as Narwal Bala, Jammu so address is different and the registered summon was sent to Narwal only as the receipt mentions only Narwal which is not correct address of the petitioner as Narwal is a different area, as such, Narwal was not the proper address for service.

11. The order impugned dated 24.06.2009 is illegal as there was total non-application of mind by the Tribunal and is, accordingly, set aside by allowing this petition and consequently, award dated 08.11.2006 is also set aside.

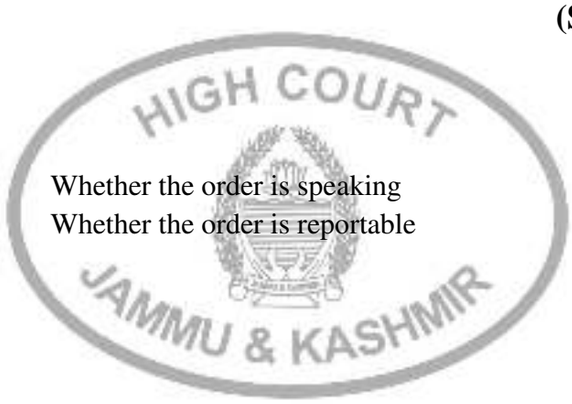
12. The Tribunal is directed to allow the petitioner to file objections by the next date of hearing and decide the claim petition afresh after allowing the petitioner to produce evidence.

13. Parties are directed through their Advocates to appear before Tribunal on 28th of August, 2020.

14. Record of the Tribunal be remitted back forthwith.

(Sindhu Sharma)
Judge

JAMMU
16 .07.2020
SUNIL-II



Whether the order is speaking : Yes
Whether the order is reportable : Yes/No.

RAM MURTI
2020.07.22 10:55
I attest to the accuracy and
integrity of this document