

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

CM-5097-CII-2010 in/and
FAO-5693-2010 (O&M)
Date of Decision:-05.07.2021.

Bijender and others

.....Appellants

Versus

Balbir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Sullar, Advocate for
Mr. A.S. Sullar, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for applicant/respondent No.4-
Insurance Company.
(Presence marked through Video Conference).

VIKAS BAHL, J. (Oral)

CM-5097-CII-2021

The present application under Section 151 C.P.C. has been moved for early hearing of the matter and disposing of the same in terms of the compromise between the appellant-claimant and applicant-respondent No.4 (inadvertently mentioned as respondent No.3). It has been stated in the application that the main case has been admitted and during the pendency of the main case, the applicant-Insurance Company has made an

offer for settlement of the present case by way of payment of enhanced compensation. It has also been stated that the compromise has been entered into wherein the applicant-Insurance Company has made offer to the claimant counsel for settlement of the case and an amount of ₹ 3,25,000/- over and above the compensation awarded by the learned Tribunal has been agreed to be paid.

Reliance has also been placed upon a writing dated 23.03.2021 annexed as Annexure A-1. A perusal of the same would show that Sh. P.S. Sullar, counsel for the appellant-claimants has written to the Manager-respondent No.4 and has stated that on instructions from his client, they are accepting the proposed enhanced compensation of ₹ 3,25,000/- as full and final settlement of claim in the aforesaid appeal on behalf of the appellants. A prayer has been made to issue the cheques/drafts in the name of the appellants as detailed in the said Annexure. In the application, the drafts as desired by the counsel for the claimants has also been annexed as Annexure A-2.

Learned counsel for applicant-respondent No.4 has undertaken to hand over the said drafts to the counsel for the claimants within two days from today and has further stated that the said drafts would be honoured. Counsel for the claimants is satisfied with the said statement. It is common case of both the counsels that the amount which was awarded by the Tribunal has already been paid to the claimants.

In view of the facts stated herein-above, the main appeal is

taken up on Board for hearing today itself.

CM stands disposed of.

CM-24991-CII-2010

This is an application for condonation of delay of 294 days in re-filing the appeal.

For the reasons stated in the application and also since the matter is being compromised, the delay in re-filing the appeal is hereby condoned.

CM stands disposed of.

CM-24990-CII-2010

This is an application for condonation of delay of 52 days in filing the appeal.

For the reasons stated in the application and also since the matter is being compromised, the delay in filing the appeal is hereby condoned.

CM stands disposed of.

FAO-5693-2010

This Court has seen the averments made in the application as well as the documents attached along with the same by the learned counsel for the Insurance Company. After considering all the said relevant facts, this Court is satisfied that the compromise, which has been effected is genuine and *bona fide* and is for the benefit of the claimants and would help in finally disposing of the matter. Although, there is no written compromise

by the appellants themselves but their counsel has signed the letter Annexure A-1 and the authenticity of the said letter has not been disputed, rather, its veracity has been affirmed even during the course of the present proceedings by the learned counsel, Sh. P.S. Sullar.

The Hon'ble Supreme Court in **Pushpa Devi Bhagat (through L.R. Smt. Sadhna Rai) Vs. Rajinder Singh and others, (2006) 5 SCC 566,** while considering the aspect as to whether “*signed by parties*” would also include signature of the recognized agent or his pleader, held that the words “*by parties*” refer not only to parties in person but their attorney holders or duly authorized pleaders also.

Paragraph 23 of the said judgment is reproduced herein-below:-

“23. We will first consider the meaning of the words "igned by parties." Order 3 Rule 1 of CPC provides that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. The proviso thereto makes it clear that the Court can, if it so desires, direct that such appearance shall be made by the party in person. Rule 4 provides that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or

*under a power-of-attorney to make such appointment. Sub-rule (2) of Rule 4 provides that every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client. The question whether 'signed by parties' would include signing by the pleader was considered by this Court in **Byram Pestonji Gariwala v. Union Bank of India** [1992 (1) SCC 31] with reference to Order 3 of CPC : (SCC pp.44 & 46-47, paras 30, 35 & 37-39)*

"B. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognized agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case.

The legislature has not evinced any intention to change the well recognized and universally acclaimed common law tradition.....

35. *So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past....*

38. *Considering the traditionally recognized role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorized agents.....*

39. *To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of his client.... If the legislature had intended to make such*

a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

(Emphasis supplied)

The above view was reiterated in [Jineshwardas v. Jagrani](#) [2003 (11) SCC 372]. Therefore, the words 'by parties' refer not only to parties in person, but their attorney holders or duly authorized pleaders."

A perusal of the record would also show that in addition to respondent No.4, there were three other respondents before the learned Motor Accident Claims Tribunal. The said respondents along with respondent No.4 were jointly held liable to pay the awarded amount. The said three respondents have not come up in appeal. At any rate, respondent No.4-ICICI Lombard General Insurance through its authorized representative has undertaken to comply with the terms of the compromise as incorporated in Annexure A-1 and to pay the money as agreed with the appellants/claimants.

Thus, in the opinion of this Court, the present compromise is also for the benefit of respondents No.1 to 3 and no prejudice has been caused to them.

It is, thus, apparent that the compromise is in accordance with law and is lawful and, therefore, the present appeal is disposed of in terms of the said compromise, which shall be treated as part and parcel of the Award. Respondent No.4 and all the other parties will be bound by the terms of the compromise and also by the averments made in the present

application.

(VIKAS BAHL)
JUDGE

July 05, 2021.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.