

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

CR-5314-2016 (O&M)

Date of decision: 20.12.2022

Dev Raj @ Dev Raj Sharma and others

....Petitioners

Versus

Pawan Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Neeraj Khanna, Advocate for the petitioners

Mr. Punit Jain, Advocate for respondent no.3

ANIL KSHETARPAL, J (Oral)

The petitioners' claim petition filed under the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') has been dismissed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') on the following two grounds:-

1) The subsequent petition is barred under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2) The claimants had withdrawn the first petition from the Tribunal at Ambala. Therefore, a fresh petition before the Motor Accidents Claims Tribunal at Mohali is not maintainable.

With regard to the first issue, the learned counsel representing the petitioners relies upon the judgment passed in **CR-2846-2011** titled as '**Smt. Suresh Devi and others vs. Jasbir Singh**

and others' decided on 09.09.2013. In the said case, the Court examined the provisions of Order XXIII Rule 1 CPC vis-a-vis the provisions of the 1988 Act. After discussing various judgments passed by the courts, the Court held that a fresh petition is maintainable, even if the previous petition was withdrawn without any liberty to file fresh one. No judgment to the contrary has been brought to the notice of this Court.

As regards the objection with regard to the jurisdiction, it is well settled by now that the claimants can file the claim petition before the Tribunal, where they reside. In the claim petition, the claimants have stated that they are residents of Mohali. Reliance in this regard can be placed upon the judgment in '**Mantoo Sarkar vs. Oriental Insurance Co. Ltd. and ors'** (2009) 2 SCC 244.

The Tribunal has allowed the application filed by the Insurance Company under Order VII Rule 11 CPC. Order VII Rule 11 CPC stipulates limited grounds on which the plaint can be rejected at its threshold. While deciding the application under Order VII Rule 11 CPC, the court's enquiry is restricted to the averments made in the plaint. The pleadings in the written statement and documents filed by the defendant are not required to be looked into at this stage. Thus, the Tribunal has erred in examining the other material, which was not a part of the petition.

For the reasons stated above, the impugned order dated 04.04.2016 is set aside. The claim petition is restored to its original number. The parties through their counsel are directed to appear before

the Tribunal on 20.01.2023.

The revision petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

20.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE