

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

CR-3815-2022 (O&M)

Date of decision : 07.12.2022

Joga Singh

... Petitioner(s)

Versus

United India Insurance Co. Ltd. and Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Arya, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 21.07.2022 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'Tribunal') dismissing the application filed by the petitioner (owner of the offending vehicle) under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) for setting aside the *ex parte* award dated 30.07.2009.

The brief facts relevant to the present *lis* are that the petitioner herein, who is owner of the offending vehicle, filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* award dated 30.07.2009 averring that he was the owner of the offending vehicle and Jaswant Singh was the driver of the vehicle in question and that when the claim petition was filed, the petitioner and the driver of the offending vehicle, namely,

Jaswant Singh, engaged a counsel and Registration Certificate of the Tractor as well as Driving Licence of the driver were handed over to the counsel who disclosed to them that there would be no need for them to appear on each and every date as the vehicle in question was insured and the Insurance Company was liable to pay the awarded amount. It was further averred that the counsel thereafter did not appear and an *ex parte* award dated 30.07.2009 was passed. Thereafter, the application filed by the Insurance Company under Section 174 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') was dismissed by the Court and the petitioner herein was informed by his counsel that there was no need to proceed with the application under Order 9 Rule 13 CPC. It was further averred that thereafter another application was filed under Section 174 of the Act of 1988 and hence the application was filed under Order 9 Rule 13 CPC in the year 2017. In reply to the said application, it was averred that the second application for setting aside the *ex parte* award dated 30.07.2009 was not maintainable inasmuch as the previous application stood dismissed in default on 21.03.2013 due to non-appearance of the applicant-petitioner. It was further averred that the application for restoration of the said application for setting aside the *ex parte* award dated 30.07.2009 was also dismissed as withdrawn by the petitioner vide order dated 27.05.2015. On the basis of the pleadings of the parties and the evidence led, the application under Order 9 Rule 13 CPC was dismissed vide the impugned order dated 21.07.2022 holding as under :

“12. The insurance company had withdrawn the application under section 174 Cr.P.C. only on the

ground that as the application under order 9 Rule 13 CPC was filed by the applicant and from the material on record and contentions of the parties it is clear that applicant was well aware about the proceedings before the learned Motor Accident Claims Tribunal, Gurdaspur and contested the same, but at their own fault applicant did not appear before the learned Tribunal and proceeded against exparte. Applicant is well aware about the passing of the ex-parte award. It is also on the file that earlier application of the applicant under order 9 Rule 13 CPC was dismissed-in-default and further application seeking the restoration of the said application which was dismissed -in- default was also withdrawn by the applicant on his instruction through counsel and now again application in hand has been filed. These above referred things goes to show that only intention of the applicant is to linger on the matter by making false excuses in order to avoid making payment of the awarded amount and to frustrate the claim of the Decree Holder and to avoid execution of the award amount against him and that is why he repeatedly becoming absent from the court proceedings. Applicant accordingly also remained fail to conclude the evidence in support of his application even after lapse of more than four years. Award is of the year 2009. Hence, in these circumstances, the grounds taken by the applicant in the application are not reasonable grounds which may be considered sufficient reasonable grounds to set aside the exparte award dated 30.07.2009. Applicant remained fail to lead evidence in this regard and did not appear for cross examination and accordingly his chief examination cannot be read. Hence, ultimately applicant remained fail to explain the reasonable

ground and to prove the same to sought the setting aside the ex parte award above referred.”

The only argument raised by learned counsel for the petitioner is that the petitioner was misled by the counsel.

Heard.

The argument raised by the learned counsel for the petitioner cannot be accepted inasmuch as the petitioner was well aware of the orders being passed by the Tribunal. In fact, earlier the petitioner and Jaswant Singh (driver of the offending vehicle) appeared through counsel on 16.10.2006 in the claim petition and also filed their written statement on 06.12.2006. However, thereafter they did not appear and vide order dated 15.10.2008 the petitioner herein and Jaswant Singh (driver of the offending vehicle) were proceeded against *ex parte* and ultimately the *ex parte* award dated 30.07.2009 was passed by the Tribunal. Thereafter, an application for setting aside the *ex parte* award dated 30.07.2009 was filed which was dismissed in default on 21.03.2013. An application was thereafter filed for restoration of the said application which was withdrawn by the counsel for the petitioner herein as well as counsel for Jaswant Singh (driver of the offending vehicle) vide order dated 27.05.2015. There is no reason forthcoming for condoning the conduct of the petitioner. The award was passed in the year 2009 and the present application, which is the second application, has been filed in the year 2017.

In view of the above, I do not find any illegality or infirmity in the order passed by the Tribunal. The present revision petition being wholly

devoid of any merit is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

07.12.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO