

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

CR-4031-2022 (O&M)

Date of decision : 07.12.2022

Jaswant Singh (deceased) through his LRs ... Petitioner(s)

Versus

United India Insurance Co. Ltd. and others ... 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 petitioners herein i.e. legal representatives of Jaswant Singh (driver 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 petitioners herein, who are legal representatives of Jaswant Singh (driver 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 Jaswant Singh was the driver of the offending vehicle and Joga Singh was the owner of the vehicle in question and that when the claim petition was filed Jaswant

Singh (driver of the offending vehicle) as well as Joga Singh (owner of the offending vehicle) engaged a counsel and Registration Certificate of the Tractor as well as Driving Licence of the driver - Jaswant Singh - 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 Tribunal and they were informed by their 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 under Order 9 Rule 13 CPC was filed 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 applicants. 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 petitioners 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.

The only argument raised by learned counsel for the petitioners

is that the petitioners were misled by the counsel.

Heard.

The argument of learned counsel for the petitioners cannot be accepted inasmuch as the petitioners were well aware of the orders being passed by the Tribunal. In fact, earlier Jaswant Singh (driver of the offending vehicle) and Joga Singh (owner 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 they 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 petitioners herein as well as counsel for Joga Singh (owner of the offending vehicle) vide order dated 27.05.2015. There is no reason forthcoming for condoning the conduct of the petitioners. 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.

(ALKA SARIN)
JUDGE

07.12.2022
Yogesh Sharma

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