

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

CR 7027/2019(O&M)

Date of decision: 21.11.2022

Iffco Tokio General Insurance Company Ltd.

.....Petitioner

Vs.

Aparna Apte Gupta and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Vishal Aggarwal,Advocate for the petitioner
Mr.Rajinder Goyal, Advocate for the respondents 1 to
4.

Nidhi Gupta,J.

This revision petition has been filed for setting aside the order dated 3.7.2019 (Annexure P-4) passed by Motor Accident Claims Tribunal, Chandigarh whereby the application filed by the petitioner-Insurance Company for recalling PW-3 Gurdeep Singh for further cross examination has been dismissed.

Brief facts of the case are that respondents/claimants filed a claim petition on account of death of Ajay Gupta son of Sh. Chandra Prakash in a road side accident on 13.8.2016. During the

course of hearing, it was stated by the claimants/respondents that deceased Ajay Gupta was in the employment of Sumpoorna Comtrade Private Limited Company since 1.4.2016. In order to prove the income of the deceased PW-3 Gurdeep Singh, Basra of Sumpoorna Comtrade Private Limited Company was examined by the claimants who produced the record with regard to the income of the deceased only for the period after the death of the deceased. Grievance of the petitioner is that the said witness did not bring any record pertaining to the period prior to the death of the deceased. It is stated that this record was imperative to be examined as deceased was an employee of Sumpoorna Comtrade Private Limited Company even prior to his death and that it is incorrect statement on behalf of the claimants that deceased was working with the said company only since 1.4.2016. As such when this fact came to the notice of the petitioner they filed an application before the Tribunal for recalling PW-3 Gurdeep Singh, for further cross examination.

Perusal of the impugned order shows that this application of the petitioner has been rejected on the ground that “*the appointment letter of deceased Ajay Gupta has also come on the record as Ex.PW3/2 and it is not the case of the claimants at this stage that the deceased was also working prior to that with the said company.*” However, a perusal of the record shows that in the claim petition (Annexure P-1) filed by claimants/respondents before the Tribunal, it

is their case itself that *“He was also rendering his service as a consultant since 2011 to Sumpoorna Comtrade Private Limited, 6th Floor, C-56A/13, Sector 62, Noida(UP) till March 2016. Then w.e.f. 1st April 2016 he got whole time employment with this company namely Sumpoorna Comtrade Private Limited as its Vice President at gross salary of Rs.2,00,000 per month. His employment continued as such until his demise.”* (Emphasis supplied)

Learned counsel for the claimant has also referred to Annexure P-2, which is a letter from the abovesaid Company, which was also produced on record by the claimants themselves, from which it is clear that the deceased had been paid a sum of Rs.8,40,000/- in the financial year ended 31.3.2016. The said letter further shows that in the financial year ended 31.3.2012 deceased had been paid Rs.1.75 lacs and in the financial year ended 31.3.2015 he had been paid Rs.1.40 lacs. Accordingly, it is submitted that it is clear that the deceased was in the employ of the said company even prior to 1.4.2016, and therefore, recalling of the above said witness PW3 Gurdeep Singh was necessary.

Per contra, learned counsel for the respondents refers to Annexure R-1 appended with their reply and stated that sufficient opportunity was granted to the petitioner for cross examination, however, they had failed to put relevant questions to the witness PW-

3 Gurdeep Singh and therefore, they cannot object to dismissal of their application for recalling of the said witness at this stage.

In response, learned counsel for the petitioner very fairly admits it's mistake and states that under Order 18 Rule 17 CPC, a necessary witness may be summoned at any stage.

Order 18 Rule 17 CPC reads as under:-

“17. Court may recall and examine witness. —The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

I have heard learned counsel for the parties and gone through the record.

There is a prima facie error in the impugned order in recording that it is not the case of the claimants that the deceased was working with the company prior to 31.3.2016. This finding is belied by the categorical assertion of the claimants themselves as referred to above in their claim petition to the effect that the deceased was rendering services as a consultant with concerned company since 2011; as also belied by Annexure P-2 wherefrom it is obvious that the deceased had been receiving payments from Sumpoorna Comtrade Private Limited Company since 2012, and was therefore, their employee. In view of the material apparent misstatements and discrepancies on the face of

the record regarding the income of the deceased, it is clear that recalling of PW3 Gurdeep Singh for further cross-examination, who is an official witness and authorised representative of Sumpoorna Comtrade Private Limited Company, is necessary for proper adjudication of the matter. Moreover, even as per Order 18 Rule 17, there is no legal bar in recalling said witness PW3.

Accordingly, this revision petition is allowed, impugned order dated 3.7.2019 is set aside and petitioner-Insurance Company, in the interest of justice, is permitted to recall PW-3 Gurdeep Singh for further cross examination in MACT case No. 680/2016. Since the case is of the year 2016, the learned Tribunal is directed to decide the same in a time bound manner, preferably within six months from the date of passing of this order.

Disposed of.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

21.11.2022
Joshi

Whether speaking/reasoned

Yes

Whether reportable

Yes/No