

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

CR-7878-2019 (O&M)

Date of decision : 19.04.2022

Deepa Rani and Others

... Petitioner(s)

Versus

Gurvinder Singh and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ram Kumar Saini, for the petitioners.

Ms. Monika Jangra, Advocate for

Mr. Tarun Dhingra, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

Challenge in the present revision petition under Article 227 of the Constitution of India is to the impugned order dated 02.12.2019 (Annexure P-4) passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal') whereby the application filed by the petitioners for appointment of a Local Commissioner for recording the statement of eye-witness Amarjeet Singh son of Tirath Singh has been dismissed.

Learned counsel for the petitioners would contend that on 10.01.2017 due to the rash and negligent driving of the contesting respondent No.1, a roadside accident had occurred in which the husband of the petitioner No.1 and father of petitioners Nos.2 and 3, namely, Anil Kumar, had sustained grievous injuries and ultimately succumbed to the said

injuries. Claim petition came to be filed by the petitioners herein. One Amarjeet Singh son of Tirath Singh resident of Y-A, Model Town, Ludhiana, Punjab, who is also said to have sustained injuries, was the eye-witness to the accident. The petitioners had led their entire evidence except for examining the said eye-witness Amarjeet Singh. As such, summons were issued to said Amarjeet Singh vide Court order dated 19.07.2019 directing him to put in appearance on 29.07.2019. As per the report of the Process Server it was stated that Amarjeet Singh had orally stated that he had got dialysis done and had been advised bed rest and, hence, was unable to attend the Court. In such circumstances, the petitioners were compelled to move an application for appointment of a Local Commissioner for recording the statement of eye-witness Amarjeet Singh who was unable to visit the Court. The said application was dismissed vide impugned order dated 02.12.2019 (Annexure P-4). Hence, the present revision petition.

Notice of motion was issued on 09.12.2019. Respondent Nos.2 and 3 have duly been served, however, no one has put in appearance on their behalf. On perusal of the memo of parties it appears that respondent Nos.2 and 3 are the proforma respondents and accordingly service upon them is dispensed with.

Ms. Monika Jangra, Advocate appearing on behalf of Mr. Tarun Dhingra, Advocate has put in appearance for respondent No.1 and has vehemently contended that there is nothing on record to substantiate the fact that the said Amarjeet Singh had any medical problems and hence the application was rightly dismissed by the Tribunal.

Heard.

In the present case Amarjeet Singh son of Tirath Singh is the eye-witness of the entire accident and the petitioners want to examine him, as he is a material witness. He is, however, as per the report of the Process Server, stated to be unwell and undergoing dialysis and, hence, unable to attend the Court. There is no reason for this Court to disbelieve the report of the Process Server. Further, the reasoning given by the Tribunal that the application is not supported by any medical evidence cannot be sustained inasmuch as the petitioners cannot be expected to have the medical history of an eye-witness of the accident. Suffice it to say that report of the Process Server is on the record wherein it is clearly stated that the said witness is unwell and is undergoing dialysis. There is no reason as to why a Local Commissioner should not be appointed to record the statement of the said eye-witness Amarjeet Singh. Accordingly, the impugned order dated 02.12.2019 (Annexure P-4) is set aside and the Tribunal is directed to appoint a Local Commissioner to record the statement of the said eye-witness Amarjeet Singh. The expenses incurred for the appointment of a Local Commissioner shall be borne by the petitioners.

Disposed off accordingly.

(ALKA SARIN)
JUDGE

19.04.2022
Yogesh Sharma

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