

CM-1434-CII-2020 in/and
RA-CR-8-2020 in
FAO-3250-2015

-1-

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

CM-1434-CII-2020 in/and
RA-CR-8-2020 in
FAO-9653-2014
Date of decision:-6.7.2022

Gurjashanjeet Singh and others

...Non-applicant/Appellants

Versus

Amandeep Singh

...Applicant/Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.D.S. Jattana, Advocate
for the applicant/respondent.

Mr.Malkeet Singh, Advocate
for the non-applicant/appellants.

H.S. MADAAN, J.

1. On account of death of Inderpreet Singh Sidhu in a motor vehicular accident, which took place on 16.5.2011 at about 4:30 p.m. while he was coming from Banur side on his motorcycle having registration No.HR-01W-4724, statedly on account of rash and negligent driving of tractor trolley NO.PB-65K-5099 by Amandeep Singh – respondent, the LRs of the deceased Inderpreet Singh Sidhu, namely Gurjashanjeet Singh and others had filed a claim petition under Section

166 of the Motor Vehicles Act, 1988 against Amandeep Singh – respondent. That claim petition was however dismissed by Motor Accident Claims Tribunal, Ambala vide award dated 30.1.2013.

2. Feeling aggrieved, the claimants had preferred an appeal before this Court. Notice of that appeal was issued to respondent. As per report on the notice sent for service of respondent Amandeep Singh for 1.12.2015, the respondent was not present at the given address and the Process Server came across his sister-in-law i.e. brother's wife, who is said to have read the summons and appended report on the back of summons in her own hand that Amandeep Singh had gone to U.P. along with his combine harvester machine and was expected to return by January.

3. However, as per report on notice for 21.3.2015, the Process Server had come across mother of respondent, namely, Smt.Narinder Kaur, who accepted the service receiving copy of summons along with copy of petition. That report was attested by a witness. On the basis of that report, since there was no representation in the Court on behalf of respondent, he was proceeded against ex-parte vide order dated 27.9.2018.

4. After hearing arguments, application under Section 5 of the Limitation Act so filed by the appellants/claimants for condonation of delay of 480 days in filing of the appeal, was accepted and delay was condoned. Arguments on merits were heard. The appeal was accepted and vide order dated 13.5.2019, the award passed by MACT, Ambala was set aside, the claim petition was accepted and compensation of Rs.30,54,000/-

along with interest @ 7.5% per annum was awarded to the claimants payable by the respondent.

5. Thereafter, respondent put in appearance through counsel moving an application for review and for recalling/reviewing the ex-parte judgment dated 13.5.2019. In that application, the respondent has contended that he was wrongly proceeded against ex-parte since the report of the Process Server that mother of respondent, namely, Smt.Narinder Kaur had accepted the service, was not proper since there was no witness of the service and Process Server could not possibly know that who was mother of respondent and then effect service upon her; the report made by the Registry of this Court (service upon responsibility) was not correct, in that way, the respondent was deprived of presenting his view point that he was not guilty of any rashness and negligence in happening of the accident, which is fortified from the fact that he has been acquitted by the criminal Court in the FIR relating to the accident in question.

6. Since the application was filed belatedly by 182 days, an application under Section 5 of the Limitation Act was filed seeking condonation of delay in moving the said application for review/set aside of the ex-parte order/proceedings stating that the respondent was not aware of the order passed in appeal by this Court earlier and he came to know about it when an execution application was filed and notice thereof was issued to the respondent by post and the delay was not intentional or wilful.

7. Notice of both the applications was issued to the

appellants/claimants, who put in appearance through counsel and filed reply opposing the applications praying for their dismissal.

8. I have heard learned counsel for the parties besides going through the record.

9. The main question to be seen in this case is as to whether the respondent was duly served in this case or not. Personal service of respondent could not be procured in this case despite sending notices by this Court several times. As the record shows on one occasion when the notice had been sent for service of respondent, he was not available at home and the Process Server came across his sister-in-law, who reported that the respondent had gone to U.P. with combine harvester machine and was to return after some time. The Process Server could have got service effected upon such sister-in-law of respondent but he did not do so.

10. Order 5 Rule 15 CPC deals with such situation where service may be effected on an adult member of defendant's family. It provides that where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family whether male or female, who is residing with him.

11. The Process Server having gone to the address of the respondent as given in the claim petition itself and coming across his sister-in-law first and then his mother, they are to be taken as members of

his family and service of the respondent effected upon his mother, who had accepted service so at her responsibility receiving copy of summons/notice along with copy of the petition is to be taken as due service in terms of Order 5 Rule 15 CPC and the Court accordingly took it to be so. With respondent not putting in appearance either in person or through counsel, he was rightly proceeded against ex-parte and no fault can be found with the same.

12. The objections to the contrary raised by the respondent in the application are totally devoid of merit. The application has been filed quite belatedly by 182 days. No cogent or convincing reason could explain justifying the delay in approaching the Court. As such no ground is made out to condone the delay in moving the application. The application deserves to be rejected being hopelessly time barred, not only that but on merits also in view of the detailed discussion above.

13. Furthermore, the respondent/applicant has moved composite application for review as well as for recalling/setting aside of the ex-parte judgment dated 13.5.2019, which is misconceived. As discussed above in detail, no case for setting aside of ex-parte proceedings is made out. The order vide which the respondent was proceeded against ex-parte is legal and valid. Similarly the order passed by this Court setting aside the award passed by MACT, Ambala and allowing the claim petition is quite detailed, well reasoned and there is no reason to interfere therewith by way of review. No ground is made out to exercise any review jurisdiction in this case.

14. Learned counsel for the non-applicant/appellants has referred to judgment *Kamlesh Verma Versus Mayawati and others* 2013(4) SCC(Cri) 265 by the Apex Court wherein law with regard to review of judgment was summed up as under:

When the Review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason;*
- (iv) The words "any other reason" mean "a reason sufficient on grounds at least analogous to those specified in the rule". 1955(1) SCR 520, relied.*

When the review will not be maintainable:-

- (i) A repetition of old and overruled arguments is not enough to reopen concluded adjudications;*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only*

for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

15. He has further referred to another judgment **Sivakami & Ors Versus State of Tamil Nadu & Ors, 2018(2) RCR(Civil) 1006**. In that judgment, it was held by Hon'ble Supreme Court that power of review is very limited and may be exercised only if there is mistake or error apparent on face of record and the review petition cannot be decided like regular intra Court appeal. It was further observed that what was not decided in appeal by a Division Bench could not be decided by it by deciding review application.

16. Further it has to be kept in mind that Section 166 of the Motor Vehicles Act is a piece of welfare legislation meant to provide prompt compensation to the LRs of deceased victim/to injured victim, as the case may be. The accident in this case had taken place on 16.5.2011 while vide order passed by this Court, the compensation has been granted to the claimants on 13.5.2019 i.e. after about 8 years. The respondent, who had not opted to put in appearance in the Court despite due service and to offer a contest now want to take advantage of his own wrong

CM-1434-CII-2020 in/and
RA-CR-8-2020 in
FAO-3250-2015

-8-

appearing belatedly after the appeal has been disposed of seeking to set the clock back, which he cannot be permitted to do.

17. No ground is made out to exercise any review jurisdiction in this case.

18. The applications stand dismissed.

6.7.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No