

226-B

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

C.R NO. 1940 OF 2016 (O&M)

DATE OF DECISION: 20.02.2023

National Insurance Company Limited

...Petitioner

Versus

BaljinderSingh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D. R. Bansal, Advocate,
For the petitioner.

Mr. Rohit Kapoor, Advocate
For respondent No.2/owner.

Mr. R. K. Saini, Advocate,
For respondents No.3 to 8/claimants.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 03.11.2015 (Annexure P-4) passed by learned Motor Accidents Claims Tribunal, Ambala (for brevity 'the Tribunal), whereby application filed by respondent No.2 (owner of the offending vehicle) under Order 9 Rule 13 CPC for setting aside the Award dated 12.09.2014, was allowed.

2. Brief recitals, as pleaded in the instant revision petition, are that on 09.01.2013, deceased Jagroop Singh was returning to his village on his motorcycle bearing registration No.HR-04-C-8776. He was followed by Manoj Kumar. When he had covered 10 yards on NH-73 from the road of Power House, Shahzadpur, a truck/tralla bearing registration No. PB-65-E-9943, being driven by respondent No.1 in a rash

and negligent manner and at a high speed, came from Saha side and hit the motorcycle of deceased, due to which he fell down on road. Tyre of truck/tralla crossed over his right leg. He was taken to Civil Hospital, Shahzadpur. From there he was referred to PGI, Chandigarh, where he later succumbed to his injuries.

2.1 Claim petition was filed by legal heirs of deceased Jagroop Singh. Since respondents No.1 and 2 (driver and owner of the offending vehicle respectively) did not file any written statement, they were proceeded *ex parte* and Award dated 12.09.2014 was passed. Execution application to execute the Award was also filed.

2.2 Respondent No.2 herein (owner of the offending vehicle) filed an application under Order 9 Rule 13 CPC for setting aside *ex parte* Award dated 12.09.2014. The said application was allowed by learned Tribunal vide impugned order dated 03.11.2015 (Annexure P-4). Hence, the instant revision petition by Insurance Company.

3. I have heard rival contentions of learned counsel for parties and have perused the case file carefully.

4. Learned Tribunal having considered entirety of matter after going through the application passed the impugned order and allowed the application moved by respondent No.2. Relevant extract thereof is reproduced herein below:

“ Perusal of file shows that when the petition was filed, memo of appearance was filed on behalf of the respondents on 25.04.2013 after which written statement was not filed and it was mentioned in the order dated 29.05.2013 regarding Power of Attorney having been filed on behalf of respondents No.1, 2 and 3. Perusal of file further shows that

on this date Power of Attorney has only been filed on behalf of respondent No.1 by Sh. Sumit Sharma, Advocate, who had earlier filed his memo of appearance on behalf of both the respondents No.1 and 2 but he did not file Power of Attorney on behalf of respondent No.2.

Perusal of the summons on file further show that the respondent No.2 Swaran Singh had not been served in the present case at any stage and no summons are on file showing the service having been effected upon the respondent No.2 Swaran Singh. Thus, the memo of appearance filed on his behalf on 25.04.2013 shows that the same was filed without any knowledge of the respondent No.2.

Nothing has come on file to prove that the respondent No.2 was aware about the pendency of the present petition and therefore, in case the respondent No.1 who appeared in the case but did not properly contest the same and right of recovery resultantly having been given to the respondent No.3, then without granting an opportunity to respondent No.2 he cannot be burdened with the said liability.

One chance can certainly be granted to the respondent No.2 to bring forward his averments. However, it is seen that the respondent No.2 when the driver was facing trial and when the driver was appearing in the present petition, then even respondent No.2 would certainly have come to know something about the present petition and he was required to remain vigilant and to appear and contest the same. However, he failed to do so but as discussed above he remained unrepresented in the entire petition and has merit in the application filed and the same is, therefore, allowed but subject to payment of costs of Rs.2500/- to be paid to the respondent No.3. To come upon 16.11.2015 for filing of written statement by the respondent No.2 and payment of costs.”

5. In my opinion, there is no material irregularity either in facts or in law so as to interfere with the impugned order in exercise of extraordinary revisional jurisdiction vested with this Court. I am in agreement with the view taken by learned Tribunal. That apart, since requirement of grant of leave to contest the claim petition already stands satisfied vide impugned order, no useful purpose would be served to carry out exercise once again by filing specific application *qua* which decision has already been rendered by learned Tribunal.

6. It transpires that during the pendency of revision petition before this Court, after allowing respondent No.2(owner of the offending vehicle) to join the proceedings, learned Tribunal has already rendered Award based on evidence adduced by respective parties.

7. In the peculiar circumstances, no ground for interference is made out and the instant revision petition is dismissed.

8. Pending application(s), if any, shall also stand disposed of.

FEBRUARY 20, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No