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

CR-2064-2022 (O&M)
Reserved on : 08.02.2023
Date of decision : 16.02.2023

Narinder Kumar

... Petitioner(s)

Versus

Dalbara Singh & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Jain, Advocate for the petitioner.

Mr. G.S. Salana, Advocate for respondent No.1.

Mr. Rajiv Joshi, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed challenging the order dated 13.05.2022 vide which the *ex parte* award dated 07.10.2015 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali) in Claim Petition being MACP-537-2013 has been ordered to be set aside and the claim petition has been restored to its original number.

Learned counsel for the petitioner would contend that the respondent No.1 i.e. owner and driver of the truck was duly served and had put in appearance before the Court through counsel on 22.11.2013 and thereafter, no written statement was filed and eventually vide order dated 29.01.2014 he was proceeded against *ex parte*. It is further contended that

though an amendment was made in the claim petition, however, once the respondent No.1 was proceeded against *ex parte* by the Tribunal, no notice of any subsequent dates of proceedings in the matter was required to be sent to him. In support of his contentions, learned counsel has relied upon the judgment in the case of **Pirag Chand Vs. Firm Ramlal Channanmal** [1988(1) RLW 285].

Per contra, learned counsel for respondent No.1 has contended that no counsel was ever engaged by respondent No.1 i.e. owner and driver of the truck, to appear in the claim petition and only a memo of appearance was filed by Shri Barinder Singh, Advocate which is apparent from the order dated 22.11.2013. The case was adjourned for filing of the written statement and filing of the power of attorney. On the next date of hearing i.e. 14.01.2014, no written statement was filed nor any power of attorney was ever filed. It is further the contention that subsequent to the passing of the order dated 29.01.2014 proceeding against the respondent No.1 *ex parte*, an amendment application was filed by the petitioner vide which the truck number was sought to be substituted as it is mentioned that earlier truck registration No.HR-37A-4176 was wrongly mentioned, however, the correct registration number of the truck was HR-68-4657. It was further the contention of learned counsel for the respondent No.1 that the name of the father of respondent No.1 was wrongly shown as Charchand Singh, however, the name of the father of respondent No.1 is Harchand Singh. It has further been pointed out by the counsel that at the time of filing of the application for execution, the name of the father of respondent No.1 has been mentioned as Harchand Singh.

Heard.

It is the categoric stand taken by respondent No.1 i.e. owner and driver of the truck that he never engaged any counsel to appear on his behalf in the claim petition. A perusal of the file also reveals that the counsel who had put in appearance allegedly on behalf of respondent No.1 before the Tribunal, did not file any *vakalatnama* and except for one date, he did not appear. It is also a matter of record that an application for amendment of the claim petition was filed and the truck No.HR-37-A-4176 given originally was sought to be replaced by HR-68-4657. Admittedly, no notice was issued to respondent No.1 after the amendment was allowed. Learned counsel for the petitioner has argued that once the respondent No.1 was proceeded against *ex parte*, no notice was required to be given of subsequent proceedings in the matter to the said respondent No.1. In the present case there is no evidence on the record to show that respondent No.1 was duly served. Admittedly, the truck number was wrongly mentioned in the original claim petition which was subsequently changed by way of the amendment and no notice post the amendment was sent to respondent No.1. Further still, the name of the father of respondent No.1 was mentioned as Charchand Singh in the claim petition and though no application was filed before the Tribunal for changing the name of the father of respondent No.1, however, in the execution application, the name of the father of respondent No.1 has been mentioned as Harchand Singh. Keeping in view the totality of circumstances, it cannot be said that respondent No.1 was duly served. The judgment cited in the case of Pirag Chand (*supra*) is distinguishable as in that case the counsel had filed a *vakalatnama* on behalf of the defendant and had also filed a written statement.

In view of the above, I do not find any illegality or infirmity in

the order passed by the Tribunal. The present revision petition which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

16.02.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

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