

[211] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4398 of 2009
Date of Decision :10.01.2023

Kharati Lal ...Petitioner

versus

Durwasha Rishi and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajesh K. Moudgil, Advocate for the appellant.
Mr. Punit Jain, Advocate for respondent No.3.

B.S. Walia, J. (Oral)

[1] Learned Counsel contends that Award dated 25.04.2009 passed by the learned Motor Accident Claims Tribunal (MACT), Kurukshetra dismissing claim petition No.89 of 2008 on the ground that the appellant-claimant had not obtained permission of the learned MACT, Kurukshetra, while withdrawing previous claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 for filing a fresh claim petition on the same cause of action is legally unsustainable, therefore liable to be set aside and the compensation assessed, paid to the appellant. No other point has been argued.

[2] Learned counsel for respondent No.3 on the other hand vehemently argued that in the absence of permission to file a fresh claim petition, while withdrawing the earlier claim petition, it was not open to the appellant-claimant to have instituted a fresh claim petition, therefore, the Award rejecting the claim petition does not warrant any interference.

[3] I have considered the submission of learned counsel for

that the matter is no longer *res integra* and stands settled by a decision of a co-ordinate Bench of this Court in CR No.2846 of 2011 in case titled as 'Smt. Suresh Devi and othersversusJasbir Singh and others' as well as CR No. 2849 of 2011 in case titled as 'Smt. Saroj Bala and othersversusJasbir Singh and others', decided on 09.09.2013.

[4] Relevant extract of the decision in Smt. Suresh Devi's and Smt. Saroj Bala's case (supra) is reproduced as under:--

“ In the case at hand the second petition was dismissed by MACT Mohali vide impugned order on sole ground that the first petition which was filed before MACT Ambala was dismissed as withdrawn and no liberty was granted to file fresh one. Dealing with similar situation Co-ordinate Bench of this High Court in Smt. Kuldeep Kaur and Ors. Vs. Kanwaldeep Singh, FAO No. 1977 of 2007 decided on 10.11.2010 has observed as under:

“.....The Motor Vehicles Act so far as it makes provision for claiming compensation in Tribunal specially constituted under the Act enacts a welfare principle and I cannot apply Order 23 Rule 1 provisions indiscriminately without minding whether it causes any prejudice to the contesting parties or not. If the vehicles had been involved and the accident was true, the dismissal of the petition for default or abandonment of proceedings before Tribunal and prosecution of the case in yet another Tribunal on the same particulars of accident cannot be treated in isolation without seeing whether such a proceeding has caused any material prejudice. If the merits of the claim cannot be attacked, I cannot allow a technical plea of abandonment of case by taking a permission for filing a petition before another Tribunal as barring a fresh petition. The finding regarding maintainability of the petition is therefore, set aside.”

Moreover, another co-ordinate bench of this court in Bimla Devi and Anr. Vs. Raj Bala and Ors. CR No. 4995 of 2008 decided on 10.03.2009 has held that the provisions of Order 23 Rule 1 of CPC are not applicable to proceedings before MACT. However, in that case besides non applicability of Order 23 Rule 1 the court based its finding on the fact that withdrawal of first petition was conditional.”

[5] In view of the decision of the co-ordinate Bench of this Court (supra), it is apparent that the dismissal of the claim petition otherwise than on merits, does not bar the filing of a fresh petition irrespective of the dismissal of the first petition as withdrawn.

[6] Accordingly, in the light of the position noted above, I am of the considered view that the second petition filed by the claimant before the learned MACT, Kurukshetra ought not to have been dismissed on the ground that no liberty was obtained by the petitioner to file a fresh claim petition when the earlier claim petition was withdrawn from the learned MACT, Kurukshetra. Consequentially, the finding in the Award regarding non maintainability of the second petition is set aside while upholding the Award to the extent of compensation assessed as payable to the appellant. In the circumstances, the respondents are directed to release compensation as determined payable to the appellant-claimant by the learned MACT, Kurukshetra within four weeks from today.

[7] Appeal *allowed* in the aforementioned terms.

(B.S. Walia)
Judge

10.01.2023

'Rajneesh'