

2023:PHHC:056590

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHFAO 4580/2016 (O&M) and
CR 8473/2015 (O&M)

Date of decision: 18.04.2023.

Jawahar Singh

.....Appellant

Vs.

Smt.Shakuntla and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Charanjit Singh Bakshi,Advocate for appellants

Mr. Ram Avtar, Advocate for the respondent

Nidhi Gupta, J.

This order shall dispose of two cases bearing FAO No.4580/2016 and CR 8473/2015 having arisen out of common order dated 14.9.2015, passed in two different claim petitions by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') bearing RBT Misc. Application Nos. 25 and 26 of 2011 dismissing two applications moved by Jawahar Singh-owner of Canter bearing No. UP-11-E-2636 (hereinafter referred to as 'the offending vehicle') for setting aside the ex-parte order dated 8.9.2010 and ex-parte Award dated 22.4.2011 u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

However, for the sake of convenience and with the consent of ld. counsel for the parties, same arguments having been addressed, facts are being noticed from FAO No. 4580/2016.

It is submitted by the Id. counsel for the appellant/ owner of the offending vehicle that in the first instance the Id. Tribunal was in patent error in proceeding ex-parte against the appellant as perusal of the impugned orders reproduced in the body of the appeal shows that the appellant was never served. It is submitted that Id. Tribunal is in grave error as perusal of the zimni orders dated 25.3.2010, 30.4.2010, 1.6.2010 and 8.9.2010 all go to show that the correct particulars of the appellant were not provided and therefore, he remained unserved in the present claim petitions before the Id. Tribunal. It is submitted that therefore, Id. Tribunal was in error in not appreciating that appellant had right to be heard and case has to be decided on the basis of evidence produced rather than grounds taken. The appellant challenged the ex parte order dated 8.9.2010 and ex parte Award dated 22.4.2011 before the Id. Tribunal by way of RBT Application No.25/2011. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in **GP Srivastava v RK Raizada and others 2000(3) SCC 54**, whereby while incorporating the provisions of Order 9 Rule 13 CPC, Hon'ble Supreme Court has held that :-

"Under Order 9 Rule 13 C.P.C. an ex-parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing."

"The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring

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party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case."

"For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

It is submitted that the appellant came to know about the ex parte Award dated 22.4.2011 when he became aware of FAO 4784/2011, Shakuntla v Mustkeen and others filed by the claimant/respondent no.1 herein. Accordingly, appellant preferred connected CR No.8473/2015 titled as Jawahar Singh v Smt. Kamla Devi and others wherein too the appellant has challenged the same impugned ex-parte order dated 8.9.2010 and ex-parte award dated 22.4.2011.

It is submitted by the ld. counsel that the ld. Tribunal has granted recovery rights against the appellant only on the ground that on the date of accident i.e. 8/9.12.2009, respondent no.2 did not possess a valid driving licence at the time of accident. It is submitted that recovery rights could not have been granted against the appellant as on the date of accident i.e. 8/9.12.2009 the respondent no.2, driver of the offending vehicle possessed a valid driving licence. It is submitted that vide order dated 7.8.2018 learned counsel for the respondent Insurance Company had been granted last opportunity to get the driving licence verified. It is submitted that it is evident from the order dated 23.2.2020 that ld. counsel for the Insurance Company had submitted before this Court that it had been verified

that respondent no.2 Mustkeen was having a valid driving licence in the year 2009 as the said driving licence was shown to be valid from 16.5.2008 to 15.5.2011. It is submitted that said Driving Licence (Annexure P-2) is valid for Motorcycle, LMV and HTV (PE). It is submitted that accordingly recovery rights could not have been granted against the appellant. It is further submitted that the appellant had filed application bearing RBT/Misc. Application NO.26/2011 before the Id. Tribunal for setting aside the ex parte order dated 8.9.2010 (subject matter in connected Civil Revision) and ex parte judgment dated 22.4.2011 which have been dismissed by the Id. Tribunal vide order dated 14.9.2015.

Ld. counsel for the Insurance Company is unable to deny the above said factual position that (a) that appellant had remained unserved before the Id. Tribunal as it is borne out from the record, AD Slip evidencing service upon the appellant did not bear signatures of the appellant and (b) the driving licence of respondent no.2-driver, route permit, registration certificate and other documents (colly.) attached herewith as Annexure P-2 in respect of offending vehicle were valid.

In view of the factual position above, the impugned order dated 14.9.2015, dismissing the application of the appellant for setting aside ex parte order dated 8.9.2010 and ex parte Award dated 22.4.2011, is set aside to the extent whereby recovery rights have been granted to the Insurance Company against the appellant herein.

FAO No.4580/2016 and CR 8473/2015 stand disposed of accordingly.

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Pending application(s), if any, in both the aforesaid case also
stand disposed of.

A copy of this order be placed on the file of connected CR
8473/2015.

18/04/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No