

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 1420/2018

Date of decision:07/02/2023

Manmohan Singh (Driver)

.....Appellant

Vs.

Nirmaljit Kaur and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kuldeep V.Singh,Advocate for the appellant.

None for respondents 1 to 5 despite service.

Mr. Vipul Sharma, Advocate for
Mr. Paul S.Saini, Advocate for respondent no.7**Nidhi Gupta, J.****CM 5474-CII/2018**

Prayer in this application under Section 5 of the Limitation

Act is for condonation of delay of 1254 days in filing the present appeal.

Despite notice no one has put in appearance on behalf of
respondents 1 to 5, while no reply to the said application has been filed on
behalf of respondent no.7.

Heard ld. Counsel.

For the reasons stated in the application, the application is allowed and delay in filing the appeal is condoned.

CM 5475-CII/2018

Prayer in this application filed by the appellant-applicant under Order 41 Rule 5 read with Section 151 CPC is for grant of stay on the operation of the impugned Award/ Judgment dated 8.7.2014 passed by Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the learned Tribunal'); and also praying for stay on the subsequent proceeding including Execution No. 8 of 2017 dated 4.1.2017 filed at Amritsar against the appellant herein.

CM 25816-CII-2018

Prayer in the present application is for stay on the warrants of sale dated 10.10.2018 issued by the Ld. Trial Court in Execution application No.8/2017; as well as for stay on the Execution application No.8/2017 filed by respondents/claimants to seek execution of the ex-parte Award dated 8.7.2014, impugned in this appeal. Further prayer is to place on record Registration Certificate (Annexure A-3) in respect of Truck bearing No. **RJ-13G-0460**; as well as Proposal-cum-Declaration for Insurance of Vehicles (Annexure A-4).

Notice of the applications issued to the claimants/respondents No. 1-5 herein was received back served, but no one appears on behalf of the said respondents.

Main Appeal.

The appellant before this Court is Driver of 'the offending vehicle' being the truck bearing registration No. **RJ-13G-0460** (as borne out

from the RC-Annexure A-3; and Proposal cum Declaration for Insurance of Vehicles-Annexure A-4, annexed with CM 25816-CII/2018 moved by the appellant) - whereas in the Memo of Parties of the present appeal, and in the impugned Award dated 8.7.2014 passed by Ld. Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Ld. Tribunal'), the vehicle number has been mentioned as **RJ-13GA-0460**.

Vide impugned Ex-parte Award dated 8.7.2014 passed by Ld. Tribunal in a claim petition filed u/s 166 of the Motor Vehicles Act, 1988, compensation of Rs.7.40 lacs has been awarded to the claimants/respondents 1 to 5 herein. Claimants are the widow, two minor sons, one minor daughter and mother of deceased Kabal Singh who had died due to the injuries suffered by him in a motor vehicular accident that took place on 15.5.2009 due to rash and negligent driving of the offending vehicle by appellant Manmohan Singh.

It is submitted by Id. Counsel for the appellant that Notice of the claim petition was given to the appellant by the Ld. Tribunal through ordinary process as well as through registered post but he did not appear and was proceeded against ex-parte vide order dated 17.2.2014. Perusal of the Memo of Parties before the Tribunal shows that appellant had to provide the name and address of owner, as well as insurance company of the offending vehicle. However, as the said details were not provided by the appellant to the Tribunal, as also because the appellant was proceeded against ex-parte before the Tribunal, the learned Tribunal accepted the claim petition of the claimants/respondent nos. 1 to 5 herein and passed the ex-parte impugned award in their favour. By way of the impugned Award the Respondents therein, being owner, and insurer, and the appellant/ driver of the truck No.

RJ-13GA-0460 offending vehicle were held jointly and severally liable to pay

the compensation. However, as the details in respect of the other respondents being owner and insurer of the offending vehicle were not provided by the appellant, accordingly execution petition was filed by the claimants only against the appellant.

In the execution application no.8/2017 filed by the respondents/claimants solely against the appellant, vide order dated 10.10.2018 sale warrants were issued in respect of the agricultural land of the appellant. It is to be noted that the appellant was proceeded against ex parte in the execution petition as well. However, after issuance of sale warrants and after receiving summons of attachment of property, the appellant filed the present appeal and has also put in appearance before the Executing Court.

Along with the appeal the appellant had also filed CM No. 7050-CII-2018 thereby seeking permission to place on record the amended memo of parties to add the latest/present address of the respondent no. 6 Surjit Singh/owner of the offending vehicle; and name and address of the respondent No. 7/ Insurance Company. This application was allowed by this Court vide order dated 6.4.2018, and amended memo of parties as well as document Annexure A-1 was taken on record. Annexure A-1 is the order dated 5.5.2018 passed by the Id. Executing Court whereby application filed by the appellant to stay/ cancel the warrants of attachment/warrants of sale of the property of the appellant, and to stay the proceedings regarding sale of property of the appellant, and to allow the appellant to contest the case on merits, and to set aside the ex-parte order whereby appellant was proceeded against ex-parte in the execution on 11.9.2017, was disposed of with directions, and including liberty that the appellant can take all these pleas by seeking appropriate remedy before the Tribunal.

Pursuant to the accident in question which had taken place on 15.5.2009, FIR No.55 dated 15.5.2009 was registered u/s 304-A IPC at PS Sadar Batala. The reason given by the appellant for this inordinate delay is that he was convicted in the above said case and thereafter his appeal was also dismissed and now his revision petition is pending before this Court. It is submitted that the sentence of the appellant has been suspended by this Court in the said revision petition, however, after conviction appellant remained in jail and therefore was not aware about the claim petition filed by the claimants and it is under these circumstances that he was proceeded against ex-parte before the Tribunal. It is further submitted by the learned counsel that it is for this reason that the appellant was not even aware about the pendency of the execution proceedings and it is only on 8.3.2014 that he received summons for attachment of his property from the office of Tehsildar Ajnala and only thereafter he came to know about the claim petition and impugned Award as well as the pending execution proceedings.

Particulars of the owner and insurer of the offending vehicle were required to be furnished by the appellant to the learned Tribunal for the purpose of fastening the liability, which as on date stands fastened solely upon the appellant. Since the said particulars have now been duly provided by the appellant before this Court vide aforementioned CM No. 7050-CII-2018, which was allowed by this Court vide order dated 6.4.2018, in the interest of justice I deem it proper to remand the matter back to the Tribunal to decide the matter afresh in view of the facts and circumstances noticed above and in the light of evidence, if any, to be led before the Id. Tribunal by the appellant and newly added respondents/parties.

Since the claim petition was instituted on 10.5.2012, I further direct the learned Tribunal to dispose of the matter within a period of eight months from the date of passing of this order.

Meanwhile, the execution proceedings in Execution Application No.8/2017 be kept in abeyance till the decision is rendered by the Ld. Tribunal.

Disposed of accordingly.

07/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes