



CR-6478-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(132)

CR-6478-2024

Date of Decision: - 07.11.2024

Amin

....Petitioner

Versus

The New India Assurance Company Ltd. and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep Kumar Rana, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 06.09.2023 (Annexure P-8) vide which the District Judge, Palwal has dismissed the application under Order 9 Rule 13 CPC filed by the petitioner for setting aside the ex-parte order dated 20.02.2020 (Annexure P-2) and ex-parte award dated 15.01.2021 (Annexure P-3).

2. Respondent Nos.2 to 4 are the widow and two minor children of Nafish, who is stated to have died in an accident, which had taken place on 12.05.2017 with the offending tractor, which is owned by the present petitioner. The said respondent Nos.2 to 4 had filed a claim petition on 11.09.2017 and in the said claim petition, the present petitioner was impleaded as respondent No.2 and the insurance company

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was impleaded as respondent No.3, whereas, the driver of the offending tractor was impleaded as respondent No.1. As is apparent from para 3 of the award dated 15.01.2021, the present petitioner and the driver had appeared and had contested the said claim petition by filing a joint written statement. Further, as is apparent from the impugned order dated 06.09.2023 (Annexure P-8), the present petitioner as well as the said driver started absenting themselves from the proceedings and on 20.02.2020, they were accordingly proceeded against ex-parte. Thereafter, the Motor Accident Claims Tribunal, Palwal passed the final award dated 15.01.2021 and awarded a sum of Rs.28,77,136/- along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the same to the claimants.

3. After a delay of more than 8 months of the passing of the said award and more than 1 year and 7 months of the passing of the ex-parte order, the present petitioner filed an application on 22.09.2021 (as noticed in para 3 of the impugned order dated 06.09.2023) for setting aside the ex-parte order and the award. The said application was vehemently opposed. The District Judge, Palwal, vide order dated 06.09.2023 (Annexure P-8) dismissed the said application dated 22.09.2021 for setting aside the ex-parte order and the award by observing that the issues were duly framed and the claimants led their evidence and the witnesses of the claimants were duly cross-examined by all the respondents i.e. including the present petitioner and after the claimants had closed their evidence, even the insurance company, who was respondent No.3 in the

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claim petition, had closed its evidence on 13.02.2020 and it was thereafter, at the stage of the evidence of the present petitioner and the driver that they became absent on 20.02.2020, which led to the passing of the ex-parte order and the award. It was further observed that there was nothing to show that on 20.02.2020 the present petitioner was prevented from appearing in the Court or there was any sufficient cause for the present petitioner for not appearing in the Court. It was also pointed out that on 23.01.2020, the insurance company had examined Sumer, its administrative officer as RW1, and it came in his evidence that at the time of the accident, the offending vehicle was owned by the present petitioner and the same was not insured and that once the said fact came in evidence, then on the very next date of the case i.e. 20.02.2020, the present petitioner and the driver intentionally became absent and opted not to contest the case. It was further observed that the application was moved only to prolong the proceedings and inspite of having knowledge of the proceedings, the present petitioner had purposely not followed up the case proceedings and thus, the application was dismissed. It is the said order which has been challenged before this Court.

4. Learned counsel for the petitioner has submitted that his counsel before the Tribunal had never informed the petitioner about the date fixed in the case and it is for the said reason that the petitioner did not know about the ex-parte order dated 20.02.2020 as well as the ex-parte award dated 15.01.2021. It is further submitted that in case, the ex-parte order is not set aside, then, irreparable loss would be caused to the

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present petitioner and thus, a prayer has been made that the ex-parte order and the ex-parte award be set aside and the petitioner be granted one opportunity to lead his evidence and a fresh award be passed.

5. This Court has heard learned counsel for the petitioner and has gone through the paper-book.

6. The conduct of the present petitioner speaks for itself. It is not disputed that the present petitioner alongwith the driver of the offending vehicle were duly served in the claim petition, which was instituted by the widow and children of Nafish, on account of his death, which had taken place in an accident with the offending vehicle, which was owned by the present petitioner. A joint written statement was also filed by the present petitioner and the said driver, as is apparent from para 3 of the ex-parte award dated 15.01.2021 (Annexure P-3). It is also not in dispute that the witnesses of the claimants were cross-examined by the counsel for the present petitioner. On 23.01.2020, the insurance company had examined one Sumer as RW1, who had stated that at the time of the accident, the offending vehicle which was owned by the present petitioner was not insured and it was thereafter on 20.02.2020, the present petitioner and the said driver absented themselves from the proceedings, resulting into passing of the ex-parte order against them. The said facts are mentioned in the impugned order at paras No.5 to 7 and the same have not been disputed before this Court. After 20.02.2020, the matter was still pending before the Tribunal up to the passing of the award dated 15.01.2021, but the present petitioner never chose to follow up the case or

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inquire about the proceedings or even inquired from the counsel with respect to the requirement of his being required to be examined before the Tribunal. Even after the passing of the ex-parte award dated 15.01.2021 for a period of more than 8 months, the present petitioner kept mum and it was only on 22.09.2021, an application under Order 9 Rule 13 CPC was filed. No plausible explanation for the said delay has been rendered. The impugned order rejecting the said application under Order 9 Rule 13 CPC was decided on 06.09.2023 and the present revision petition has been drafted on 23.10.2024 i.e. after a gap of one year and 1 month and for the same, no plausible explanation has been made.

7. Admittedly, the petitioner was duly served and had participated in the proceedings and was having full knowledge of the proceedings and thus, the application under Order 9 Rule 13 CPC has been rightly rejected vide the impugned order dated 06.09.2023. In case any interference is shown in the present case, the same would cause irreparable loss to the claimants, who had filed the claim petition in the year 2017 and after more than 3 years and 4 months of trial, their claim petition was allowed and the award was passed on 15.01.2021 and in case, the said award is set aside, the same would put the clock back and would result in further delay in redressing the grievance of the claimants. The sole argument raised by the learned counsel for the present petitioner to the effect that the counsel of the petitioner in the claim petition did not inform the present petitioner about the proceedings before the Tribunal is not sufficient for allowing the present revision petition and setting aside

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the impugned order as well as the ex-parte award as it was also the duty of the petitioner to have followed up his case and to make inquiries about the same. From the facts and dates, which have been mentioned herein above, it is apparent that the petitioner had been completely negligent in doing the same. Moreover, there is nothing on record to suggest that any action has been taken by the petitioner against counsel before the Tribunal and the plea has been taken only to cover his own negligence. Every endeavour has been made by the petitioner to avoid his liability to pay and to prolong the proceedings.

8. Keeping in view the above-said facts and circumstances, the impugned order dated 06.09.2023 deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

November 07, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes