

2024:PHHC:172900



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

125

CR-7380-2024 (O&M)
Date of decision: 18.12.2024

Amandeep Singh @ Aman

...Petitioner

Versus

Kamaljeet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Shivender Pal Singh, Advocate for
Mr. B.S. Bhalla, Advocate for the petitioner.

VIKAS SURI, J.

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside order dated 19.10.2024 (Annexure P-1) passed by the learned Motor Accidents Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal'), whereby the defence of the petitioner has been ordered to be struck off.

2. Briefly, respondent Nos.1 and 2 filed a claim petition before the Tribunal seeking compensation on account of death of Gurpreet Singh (husband and son of respondent Nos.1 and 2, respectively) in a road accident.

2.1 Upon notice in the said claim petition, the petitioner put in appearance through counsel on 30.07.2024. The petitioner has been arrayed as respondent No.1 in the supra claim petition, alleged to be



driver of the offending vehicle, and owner of the said vehicle has been arrayed as respondent No.2 therein. The petitioner, under the legitimate expectation that the owner of the offending vehicle would safeguard his interests, was not able to file the written statement in the matter. The defence of the petitioner has been ordered to be struck off by the learned Tribunal, vide order dated 19.10.2024.

3. Aggrieved by the aforesaid, petitioner (Amandeep Singh @ Aman) has assailed the order dated 19.10.2024 by way of the present petition.

4. Learned counsel for the petitioner submits that the petitioner was depending upon the owner of the vehicle, however, he has failed to put in appearance and hence, has been proceeded against *ex parte*. The petitioner is a person of limited means and would be prejudiced in case he is not permitted to contest the claim petition. Thus, in the aforesaid circumstances, he prays for one opportunity to file his written statement and contest the petition.

5. Heard learned counsel for the petitioner and with his able assistance, perused the record.

6. Concededly, the petitioner put in appearance before the Tribunal on 30.07.2024 and was afforded four effective opportunities including one last opportunity for filing the written statement, but failed to do so. It is further noticed that costs were also imposed upon the petitioner vide order dated 07.10.2024 and thereafter, the defence of the



petitioner has been ordered to be struck off vide the order impugned in the present petition.

7. The Hon'ble Supreme Court of India in the case of ***Bharat Kalra vs. Raj Krishan Chhabra***, 2022 SCC Online SC 613, while relying upon the earlier judgment in ***Kailash vs. Nanko and others***, (2005) 4 SCC 480, held that that provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing the written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

8. In the present case, apparently, ratio of the aforesaid authoritative judicial pronouncements was followed by the Tribunal and final opportunity to file written statement was afforded, subject to costs, which the petitioner failed to avail. It is settled law that the Court should not be too harsh to strike off the defence of the respondents at an early stage. It is imperative that the respective stand of both the parties should be before the Court for complete adjudication between the parties. The rules of procedure are handmaids of justice and cannot be allowed to defeat substantial justice between the parties.

9. It is noticed that after the impugned order dated 19.10.2024 was passed, the respondent-claimants have examined themselves as well as one other witness, however, their cross-examination is still pending. In view of the peculiar facts and circumstances of the present case and in



order to do complete justice between the parties, the petitioner deserves to be granted one opportunity to file his written statement, failing which he would suffer irreparable loss, which in turn would result in miscarriage of justice. It is well settled that for complete adjudication, it is necessary that there is a contest trial and accordingly, scales of convenience have to be balanced between the parties.

10. In ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini***, (2020) 2 SCC 708, a three-Judge Bench of the Hon'ble Supreme Court had also examined the timeline for filing of written statement and laid down that in a non-commercial dispute matter, the unamended provision of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay.

11. Accordingly, the present petition is allowed and the impugned order dated 19.10.2024 (Annexure P-1) is set aside, subject to payment of Rs.5000/- as costs, to be paid to the claimant-respondent Nos.1 and 2 and the learned Tribunal is directed to grant one effective opportunity to the petitioner to file his written statement. It is made clear that failing to file the written statement or to pay costs in terms of this order, the petitioner would not be entitled to any further indulgence in the said matter and the Tribunal shall proceed with the claim petition without this order having any bearing on the trial. It is also clarified that



on filing of the written statement, by availing the benefit of the present order, the claimant-respondents would be at liberty to re-examine their witnesses, who have already been examined in chief.

12. As the present revision petition is being disposed in the absence of claimant/respondents, liberty is granted to them to seek recalling of the present order, if valid grounds for the same are made out.

13. The revision petition is allowed in the aforesaid terms.

14. Pending applications, if any, also stand closed.

December 18, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No