
(2010) 01 P&H CK 0053
In the Punjab And Haryana At Chandigarh

Interstate Finance (P) Ltd.	Vs	APPELLANT
Darminder Kumar and Others		RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2010) 159 PLR 87 : (2010) 3 RCR(Civil) 31

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of appeal bearing FAO No. 5101 of 2006 and revision petition bearing CR No. 5143 of 2006 as both the cases arises out of the same award dated 24.10.2006 passed by the Motor Accident Claims Tribunal, Karnal. It is pertinent to mention here that the appeal is against the order dated 24.10.2006 whereby an application filed by the appellant under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short "CPC") for setting aside ex parte award has been dismissed and the revision petition filed against the application filed under Order 9 Rule 13 CPC by the driver (respondent No. 1) which has been allowed by which the award was modified on 11.11.2003.

2. In the appeal, notice of motion Was issued on 14.11.2006 and execution of the award was ordered to be stayed subject to deposit of 50% of the awarded amount. It is recorded in the order dated 19.9.2008 that out of the total amount of compensation awarded to the claimants i.e. Rs. 6,27,000/- besides interest @ 12% per annum from the date of filing of the claim petition till the date of realisation, 50% amount has already been deposited and has been ordered to be released vide order dated 10.12.2008.

3. In fact the present appeal as well as revision petition are being contested by the claimants whereas driver of the offending vehicle has not come forward to contest the same. Vide order dated 10.4.2003, Civil Revision was ordered to be

heard along with the appeal and as such, both the appeal as well as Civil Revision are being disposed of together.

4. Brief facts of the case are that on 29.1.2000 Subhash Chawla who was driving Car No. DL-2C-G-4019, met with an accident with four wheeler No. DL-1 LA-6787 near National Animal Genetics Institute Bureau, G.T. Road, Karnal and died in the accident. Claim petition was filed by his legal representatives in which respondents No. 1 and 2 were proceeded against ex parte. The Motor Accident Claims Tribunal, Karnal vide its award dated 16.8.2002 assessed the compensation to be awarded to the claimants to the tune of Rs. 6,27,000/- and interest @ Rs. 12% per annum and held respondent No. 1 (driver) solely liable to make the payment. Meaning thereby the appellant who was arrayed as respondent No. 2, was absolved. Against the ex parte award dated 16.8.2002, the respondent No. 1 filed application under Order 9 Rule 13 CPC on 25.10.2002 in which according to learned Counsel for the appellant, no notice was given to the appellant and ex-parte award was set aside and the issue of relief was modified to the extent that now the liability was imposed upon both the respondents, namely, the driver and the present appellant to make the payment of the amount jointly or severally. It is submitted that when claimants filed execution application, the appellant was served and came to know about the modification of award which led to the filing of an application at his instance under Order 9 Rule 13 CPC on 24.11.2004 which has been dismissed on 24.10.2006.

5. The only argument raised by the learned Counsel for the appellant before this Court is that Order 9 Rule 13 CPC provides that before passing an order, notice is required to be served upon opposite party. In this case, the opposite party has been considered by the learned Tribunal only the claimants and as such, it is recorded in para 5 of the impugned order dated 11.11.2003 that since the other party had no objection, award was accordingly set aside. It is submitted that opposite party in this case would not only be the claimants but also the appellant as the award has been modified and liability on the appellant has also been imposed. In this regard, learned Counsel for the claimant has submitted that the claimant is entitled to compensation whether it is to be paid by the driver or by the appellant. It is admitted that half of the compensation amount has already been received, which has been deposited by the appellant. However, it is denied that the appellant had no knowledge about the earlier proceedings.

6. Thus, the question in this case is as to whether the Court is required to issue a notice at the time of disposing of an application under Order 9 Rule 13 CPC to the effected party." In this regard, a look at Order 9 Rule 13 CPC is necessary, which is reproduced as under:

Setting aside decree exparte against defendant. In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient

cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

7. As per Order 9 Rule 13 CPC, it is mandatory to serve notice of the application upon the opposite party. Learned Tribunal has wrongly held that the opposite party would mean the claimant alone and disposed of the application in the absence of the appellant who in fact is the aggrieved party as with the modification of award liability has been imposed upon him. It is well settled that nobody should be condemned unheard specially when there is an order in his favour which has been modified on a subsequent application.

8. In view of the above, I find force in the argument raised by the learned Counsel for the appellant and for that reason, this appeal is allowed. The impugned award dated 11.11.2003. is hereby set aside as also order dated 24.10.2006 and the matter is remanded back to the Motor Accident Claims Tribunal, Karnal for deciding the application afresh filed by the driver under Order 9 Rule 13 CPC, after issuing notice to the appellant. The parties are directed to appear before the Tribunal on 19.2.2010. A request has also been made by the learned Counsel for the claimants that in any case the compensation has to be paid in terms of the award of the Tribunal by either of the respondents and because of their inter se dispute, the claimants are sufferers as compensation is not being paid to them. After hearing the learned Counsel for the claimants in this regard, the Tribunal is further directed to decide the application, as early as possible, preferably within a period of three months, from the date of appearance of learned Counsel for the parties. Insofar as revision petition is concerned, it is not pressed and the same is hereby dismissed as infructuous.