
(2003) 05 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3935 of 1993

J and K State Road Transport Corporation	APPELLANT
Vs	
Nachhattar Kaur and Others	RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 2
Motor Vehicles Act, 1988 — Section 176
Punjab Motor Accidents Claims Tribunal Rules, 1964 — Rule 6

Citation : (2005) ACJ 1007 : AIR 2004 P&H 1 : (2003) 135 PLR 799 : (2003) 4 RCR(Civil) 115 : (2003) 2 RCR(Civil) 6

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : K.S. Cheema, for the Appellant; Gurcharan Dass, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under article 227 of the Constitution is directed against the order dated 19.5.1993 passed by the Motor Accident Claims Tribunal, Ludhiana (for brevity, "the Tribunal") dismissing the application of the petitioner for setting aside the ex parte award dated 23.10.1990 passed by the Tribunal awarding a sum of Rs. 1,72,800/-, the award has been made in favour of mother of deceased Harbans Singh, his widow, son and daughter. The operative part of impugned order dated 19.5.1993 reads as under: -

"Shri Tilak Raj Sharma AW1 mainly deposed that Jammu and Kashmir State Road Transport Corporation has its office in Jammu. He was working as General Manager (Operation) at Jammu. No notice or intimation in claim petition filed by Smt. Nachhattar Kaur etc. was received. Even the ex-parte award was not in their knowledge. Only on 29.6.1991 when the bus was attached, Shri Pritam Singh driver brought it to his notice and one Shri C.L.Luthra, Legal Asstt. was deputed to go to Ludhiana to conduct the proceedings. He produced the photostat copy of the fitness certificate Ex. A1 and photostat copy of the registration Ex.A2 showing

that the bus was registered at Jammu and the permit of the bus was issued at Jammu, the copy of which is Ex, A3. He further deposed that receipt acknowledgement due Mark X, is not initialled by any of the officials of his office. According to him Shri Chaju Ram never intimated the office, about the pendency of the claim petition. In cross-examination he admitted that counsel was engaged at Ludhiana by the Legal Asstt. Shri C.L.Luthra. No resolution was passed by the applicant authorising Shri Luthra to engage a counsel. He never gave any power of attorney before 16.7.91. Application dated 9.7.91 was shown to him in the execution file, which according to him do not bear his signatures, according to him none else is competent in Jammu Region to engage a counsel . Instructions to Shri C.L. Luthra were oral. He admitted that J & K State Road Transport Corporation has a region at Siri Nagar and the other at Jammu. The Chairman of the Corporation is one. The address according to him is incomplete.
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On 14.8.86 Smt. Gurdial Kaur one of the claimants died and application to bring her L.Rs on the record was moved. Vide order dated 31.11.86 Sh. Jaswant Singh and Shri Bagga Singh were allowed to join as L.Rs. of Smt. Gurdial Kaur and the respondents were ordered to be summoned for 18.12.86. For 18.12.86 the respondent No. 1 was duly served through registered cover. Only Chaju Ram was left to be served and he was ordered to be summoned for 12.2.87. The counsel for the applicant argued that no specific order for proceeding ex-parte against the respondent No. 1 was passed on 18.12.86. In the absence of such an order, the exparte award, therefore, could not be passed. I do not agree with this contention, because it is clearly mentioned that the respondent No. 1 has been duly served through registered cover. The respondent No. 1 was not subsequently, summoned on any date. Even if specific order was not made, on that date, it was manifestly mentioned that J & K State Road Transport Corporation has been duly served through registered post and A.D. is on the record through General Manager, but none is present to contest the petition. Automatically the respondent No. 1 was proceeded against ex-parte, when no fresh notice was issued to it. Thus no benefit on this count cannot be given to the applicant.

The learned counsel for the applicant further argued that the summons were addressed to Siri Nagar while the bus in question belongs to Jammu Depot, thus the address given on the registered summons was wrong and it cannot be treated as due service. It is admitted by Shri Tilak Raj AW1 that J & K State Road Transport Corporation has its office in Siri Nagar as well as in Jammu. The Chairman of the Corporation is one. If the summons were received in Siri Nagar intimation to the office at Jammu could be passed since the transport corporation is the same. Secondly the driver of the bus Shri Chaju Ram contested the petition so it cannot be said that the Corporation has no knowledge about the pendency of the claim, or was not duly served. I do not agree with the counsel for the appellant that there was no proper service or the applicant was prevented for sufficient cause to appear and contest the claim petition, rather it is proved

that the Corporation was duly served, the pendency of the claim petition was within the knowledge of the Corporation and it slept over the matter. Shri Chaju Ram the driver was only allowed to continue that proceedings. The initials on the acknowledgement due of an official from the office of the Corporation have to be taken as a due service. The statement of Shri Tilak Raj AW1 cannot be believed as correct that his acknowledgment do not bear the initials of any officials of his office. It is very easy to deny the initials on such documents. On the other hand, there is presumption in law that the notice in the registered cover attached to the acknowledgment, which was initialled was delivered in an ordinary course of official duty by the postman. I, therefore, decide this issue against the applicant."

2. Mr. K.S. Cheema, learned counsel for the petitioner has vehemently argued that no service at the head office of the Corporation at Sri Nagar was effected as required by Order XXIX Rule 2 of the Code of Civil Procedure, 1908 (for brevity, "the Code") and the petitioner was deprived of an opportunity of hearing. According to the learned counsel, the service of summons at head office as per requirement of the aforementioned provisions is must and service effected at Jammu even if it is presumed to be good service, cannot be deemed to be a valid service. Therefore, it is a case of no service and the award dated 23.10.1990 passed ex pane is liable to be set aside. Learned counsel has referred in detail to the statement made by the witnesses of the petitioner-Corporation to show that service at the head office at Sri Nagar was never effected and the Registered A.D. notice sent at Jammu would not satisfy the requirement of Order XXIX Rule 2 of the Code. Mr. Cheema urged that the Tribunal has committed a grave error by imputing knowledge to the petitioner-Corporation merely because, the driver of its bus had contested the claim because it cannot be any substitute of service as provided by Order XXIX Rule 2 of the Code.

3. Mr. Gurcharan Dass, learned counsel for the claimant-respondents has argued that service was effected at Jammu and the petitioner-Corporation was served for 18.12.1986 through registered A.D. cover. According to the learned counsel, only one Chajju Ram was left to be served who was ordered to be served for 12.2.1987. The learned counsel maintained the even Chajju Ram was served who was, driver of the offending bus owned by petitioner-Corporation. Therefore, petitioner-Corporation must be fully aware of the pending proceedings.

4. I have thoughtfully considered the submissions made by the learned counsel for the parties and do not feel persuaded to accept the submissions made by learned counsel for the petitioner. u/s 111-A of the Motor Vehicles Act, 1939 (for brevity, "Old Act") which is equivalent to Section 176 of the newly enacted Motor Vehicles Act, 1988 (for brevity, "new Act"), the State Government is vested with the powers to make rules regulating the procedure to be followed by the Tribunals in holding an enquiry for the purposes of considering the claim petitions filed u/s 110 of the Old Act or Sections 165 to 174 of the new Act. Accordingly, the State Government has framed the rules known as Punjab Motor Accidents Claims Tribunals Rules, 1964 (for brevity, "the Rules"). Rule 6 of the Rules

postulates sending of notice to the parties involved. Section 176 of the new Act and Rule 6 of the Rules read as under:-

"176. Power of State Government to make rules.- A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:-

(a) the form of application for claims for compensation and the particulars, it may contain, and the fees, if any, to be paid in respect of such applications;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under the Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of Claims Tribunal; and

(e) any other matter which is to be, or may be prescribed."

XXX XXX XXXb 6. Notice to parties involved- If the application is not dismissed under Rule 5, the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident and its insurer, a copy of the application together with a notice of the date on which it will hear the application, and may call upon the parties to produce on that date any evidence which they may wish to tender."

A perusal of Section 176 of the new Act reveals that the State Government has been vested with the power to regulate the procedure to be followed by the Tribunal in holding an enquiry under Chapter XII i.e. adjudication of the claims of compensation made under Sections 165 to 174 of the new Act. This power flows from Section 176(b) and (c) of the new Act. Sub-sections (b) and (c) of Section 176 of the new Act also vest the Tribunal with the power of a civil court which it "may" exercise. Accordingly, Rule 6 of the Rules have provided issuance of notice to the owner of the motor vehicle involved in the accident and its insurer.

5. The question whether the provisions of Order XXIX Rule 2 of the Code would rigorously apply making it mandatory for a claimant to serve notice on the Corporation at its head office has to be examined in the light of the provisions of Section 176 of the new Act and Rule 6 of the Rules. For that purpose a look at the provisions of Order XXIX Rule 2 of the Code may also be noticed which read as under:-

Order XXIX Suits By Or Against Corporations

2. Service on Corporation.- Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served -

(a) on the secretary or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

From the perusal of Rule 2 of Order XXIX of the Code, it emerges that this provision is subordinate to any statutory provision regulating service of process. It also becomes clear that the expression "may" has been used. Therefore, it is evident that Order XXIX Rule 2 of the Code has to be read in juxtaposition to Rule 6 of the Rules. Rule 6 only imposes an obligation on the Tribunal to send notice to the owner of the motor vehicle involved in the accident together with a notice of the date on which it would hear the application. The Tribunal has discharged that obligation as is clear from the reading of paragraph 6 of the order that the petitioner-Corporation was served for 18.12.1986 through Registered A.D. It has been the case of the petitioner that notice should have been served only at Sri Nagar where registered office of the petitioner-Corporation is situated. The service at Jammu has been described as contravening Order XXIX Rule 2 of the Code. The service according to Rule 6 of the Rules has been effected and there is intrinsic evidence available on record showing that the petitioner-Corporation was aware and have full knowledge of the accident as well as the proceedings before the Tribunal. It has been admitted that at one stage, Mr. C.L. Luthra, Legal Assistant was deputed to visit Ludhiana to conduct the proceedings and engage a counsel. Therefore, I am of the firm opinion that the rigours of Order XXIX Rule 2 of the Code cannot be applied to the proceedings before the Tribunal.

6. I am further of the view that if Order XXIX Rule 2 of the Code is applied to the proceedings before the Tribunal, then Rule 2 expressly provides that it was subject to any statutory provisions regulating service of process. In other words, the provision of Rule 2 of Order XXIX of the Code is subject to Order V Rules 13 and 14 of the Code. The provisions of Order V Rules 13 and 14 of the Code read as under:-

Order V Issue and Service of Summons

1 to 12. xx xx xx xx "13. Service on agent by whom defendant carries on business.- (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Service on agents in charge in suits for immovable property.- Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the

defendant in charge of the property."

7. The provisions of Rule 2 of Order XXIX of the Code came up for consideration before the Supreme Court in the case of *Jute and Gunny Brokers Ltd. and Another Vs. The Union of India (UOI) and Others*, . In that case, the dispute has arisen with regard to service of order of requisition of the property of the company under Rule 75-A of the Defence of India Rules, 1939 and the question has to be viewed in the light of Section 148 of the Indian Companies Act, 1913 (for brevity, "1913 Act"). Their Lordships interpreted Section 148 of 1913 Act to mean that Section 148 of 1913 Act or Rule 2 of Order XXIX of the Code are not exhaustive provisions. Therefore, service under any provision of the Code would be good service and the notice could have been served on the Managing Director or principal agent or any other responsible officer. The observations of their Lordships in this regard read as under:-

"It will be seen that Rule 2 of Order XXIX of the CPC is subject to any statutory provision regulating service of process and where there is any specific statutory provision Rule 2 would not be applicable. The only other statutory provision is in Section 148 *ibid*. But that provision, as the words themselves show, is merely an enabling provision and it nowhere lays down that the method mentioned in Section 148 is the only method of serving all documents on a company. The section lays down by leaving it or sending it by post at the registered office of the company. But the language shows that is not the only provision, nor is it imperative that service can be effected in the way mentioned in that section, and in no other way. If that were the intention this section of the Companies Act would have been very differently worded. We therefore, find that there is one enabling provision in Section 148 of the Companies Act as to the manner in which documents may be served on a company or a corporation. Order XXIX, Rule 2 lays down another method also in addition which courts may employ in effecting service on a corporation. To our mind either of the modes specified in Section 148 of the Indian Companies Act or Order XXIX, Rule 2 of the CPC is a reasonable mode of effecting service on a company. It is said that Order XXIX Rule 2 applies to a case of a suit by or against a corporation. That is undoubtedly so. But what is good service in suits would in our opinion be reasonable service for the purpose of Rule 75-A(2). Therefore, notices under Rule 75-A(2) could be served on the mills either in the manner provided in Section 148 of the Companies Act or in the manner provided in Order XXIX Rule 2 of the Code of Civil Procedure, In this case the manner employed for the service of notices under Rule 75-A(2), is that provided in Order XXIX, Rule 2(a), namely, by effecting service on the principal officer of the mills, namely, the managing agents."

The same principle has been followed in *Shalimar Rope Works Ltd. Vs. Abdul Hussain H.M. Hasanbhai Rassiwalla and Others*, holding that bailiff can always leave the summons at the registered office of the company in case he fails to find and serve the Secretary or Director or any other Principal Officer of the

corporation. Their Lordships observed as under:-

"The meaning of Clause (b) has got to be understood in the background of the provisions of the Code in Order 5 which is meant for issue and service of summons on natural persons. Sending a summons by post to the registered office of the company, unless the contrary is shown, will be presumed to be service on the company itself. But the first part of Clause (b) has got to be understood with reference to the other provisions of the Code. In Rule 17 of Order 5 it has been provided:-

"Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."

Sending summons to a corporation by post addressed to it at its registered office may be a good mode of service either by itself, or preferably, by way of an additional mode of service. But leaving the summons at the registered office of the corporation if it is literally interpreted to say that the summons can be left anywhere uncared for in the registered office of the company, then it will lead to anomalous and absurd results. It has to be read in the background of the provision contained in Order 5 Rule 17 of the Code. In other words, if the serving person or plaintiff is not able to serve the summons on the Secretary or any Director or any other Principal Officer of the Corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect...."

8. It is true that in the instant case, notice was not served at the registered office of the petitioner-corporation at Sri Nagar. The provisions of Order XXIX Rule 2 of the Code cannot be read in isolation and has to be read with Rules 13 and 14 of the Order V of the Code. Order V of the Code shows that service of summons on an agent in case the defendant does not reside within the local jurisdiction of the Court issuing that summons, has to be deemed as good service. Even service on such an agent of the defendant who is incharge of the property would also be considered as good service. In the instant case, the service was effected at the office (other than the registered office) at Jammu, It was also to the notice of the petitioner-Corporation that proceedings were going on. Therefore, even under the various provisions of the Code, the service would be deemed to be effected

and no fault can be found in the impugned order dated 19.5.1993.

9. I am further of the view that setting aside the award dated 23.10.1990, at this stage, would result into rehearing of the whole case which is already being prosecuted by the legal representatives of Smt. Gurdial Kaur widow of deceased Ajaib Singh who lost his life in the accident. It would result into another round of litigation for the claimant-respondents. Even other-wise the amount awarded is meagre and no appeal has been filed by the claimant-respondent for enhancement of the same. Therefore, I do not feel inclined to set aside the impugned award and find that the instant petition is devoid of merit.

For the reasons recorded above, this petition fails and the same is dismissed.