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(2009) 01 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4487 of 2005 (O&M)

Karam Pal — APPELLANT

Vs

Ramesh Jain — RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : (2009) 1 AICJ 664 : (2009) 3 PLR 235 : (2009) 2 RCR(Civil) 613

Hon'ble Judges : Rajesh Bindal, J

Advocate : K. S. Dhanora, Adocate. R.P. Singh Ahluwalia, Adocate, Vandana Malhotra, Adocate., Advocates for appearing Parties

Judgement

Rajesh Bindal J

1. Challenge in the present petition is to the order passed by the learned court below, whereby the application filed by the petitioner for restoration of the claim petition, which was dismissed in default on 27.9.2004, was dismissed.

2. Briefly, the facts are that the petitioner suffered serious injuries on the vital parts of the body including the fractures of tibia and fibula in a road accident on 7.8.2003. A claim petition was filed which was dismissed in default on 27.9.2004 on account of nonfiling of process fee by the petitioner. The application for restoration was filed on 6.6.2005 and considering the same to be delayed, the learned Motor Accidents Claims Tribunal (for short, ''the Tribunal'') dismissed the restoration application.

3. Learned counsel for the petitioner submitted that the petitioner in the present case had suffered serious injuries in the accident. He engaged an Advocate in the Tribunal for pursuing his claim petition. However, it was dismissed in default on 27.9.2004 on account of nonfurnishing of process fee for summoning the witnesses. The application for restoration could not be filed for the reason that he was not aware of this fact, otherwise there was no reason for him to have not approached the court immediately. The petitioner, being a poor villager, will suffer loss in case his claim petition is not restored. As far as delay in filing of the

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restoration application is concerned, it is stated that the application was filed within limitation from the date the petitioner got knowledge of the order of dismissal of the claim petition. In any case, the petitioner cannot be made to suffer on that account as he had done whatever was advised by the counsel. On account of any lapse on the part of the counsel, the petitioner should not be made to suffer.

4. On the other hand, learned counsel for the respondents submitted that a perusal of the facts on record clearly establish that ever since the claim petition was filed by the petitioner, the same was not being pursued by him. No process fee was filed for summoning the witnesses. Even the application for restoration was belated and the same was not accompanied by any application for condonation of delay. In such circumstances, no case for restoration of the claim petition, which was dismissed in default, is made out.

5. Heard learned counsel for the parties and perused the record.

6. No doubt, it is a case where there has been lapse on the part of the petitioner as well as the counsel engaged by him. Firstly, the process fee was not filed for summoning the witnesses and thereafter the restoration application was filed belatedly. However, as far as nonfiling of specific application for condonation of delay in filing the restoration application is concerned, the petitioner cannot be made to suffer as he filed the application in whatever manner he was advised by the counsel engaged by him, otherwise there was no hitch to the petitioner to have even filed the application for condonation of delay in filing the application for restoration of the claim petition. Considering the fact that it is a claim petition filed by the petitioner claiming compensation on account of serious injuries suffered in a road accident, merely because there is some lapse on the part of the petitioner or his counsel, in my opinion, he should not be made to suffer as on that account the respondents, who have appeared before this Court, can be compensated with costs.

7. For the reasons stated above, the impugned order dated 27.9.2004 passed by the learned Tribunal dismissing the claim petition in default is set aside and also the order dated 18.7.2005. However, the same shall be subject to payment of Rs. 2,000/ as costs to respondents No.2 and 4 each.

8. The parties are directed to appear before the Tribunal on 18.2.2009. The unserved respondent No.3, namely, Rotary Club Ambala Central, Ambala City be summoned by the Tribunal.

9. The revision petition is disposed of in the manner indicated above.

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