
(2000) 04 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 6115 of 1999

Khazisra

APPELLANT

Vs

Jagdish

RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Citation : (2000) 4 ICC 165 : (2000) 3 LJR 225 : (2000) 3 RCR(Civil) 214

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. Sandeep Jasuja, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. The present revision petition has been filed against the order dated 9.8.1999 passed by the Court of Motor Accidents Claims Tribunal, Kurukshetra which dismissed the application of Smt. Khazisra under Order 9 Rule 9 of the Code of Civil Procedure for restoration of the claim petition which was dismissed on 1.5.1996 in default by the Tribunal.

2. Some facts can be noticed in the following manner :

Smt. Khazisra filed a petition under Section 166 of the Motor Vehicles Act, 1988 against Jagdish, Amarjyoti and National Insurance Company. That petition was dismissed for default of prosecution on 1.5.1996. Thereafter, the petitioner filed another claim petition No. 158 of 1997. Notice of this claim petition was given to the respondents who filed the replies. A preliminary objection was taken that the second claim petition is not legally maintainable in view of the fact that earlier claim petition was dismissed on 1.5.1998. The parties led the evidence and vide order dated 16.9.1996, the second petition was dismissed holding that it was not maintainable with the following observations :

"To my mind, in the circumstances of the case, a fresh claim petition on the same cause of action when the earlier one stands dismissed in the presence of the opposite party, is not maintainable. Whatever remedy the petitioner has is

with the same Court where the earlier petition was dismissed in default. She may seek the right remedy of getting the earlier claim petition restored. This petition which is second claim petition is not maintainable. This issue is decided against the petitioner."

3. Thereafter, the petitioner filed an application for restoration of the claim petition which was dismissed in default on 1.5.1996. Notice of the application was given to the respondents who filed the replies and denied the allegations and from the pleadings of the parties, the Tribunal framed the following issues :

1. Whether there are sufficient grounds to restore the claim petition dismissed in default on 1.5.1996 ? OPA

2. Whether the application is within time ? OPA

3. Whether the present application is not maintainable in view of the order passed by Shri J.D. Chandna, the then learned M.A.C.T., Kurukshetra dated 16.9.1997 ?

4. Relief.

The parties led evidence in support of their case and vide impugned order dated 9.8.1999, the present application was dismissed holding that it is hopelessly barred by limitation and in this manner the present revision petition.

4. I have heard learned counsel appearing for the petitioner and with his assistance have gone through the record of the case.

5. Learned counsel for the petitioner has made some compassionate plea rather than legal one by submitting that it is a case of injury and undue hardship has been caused to the petitioner. Learned counsel submitted that due to the fault of the lawyer, the petitioner/litigant should not suffer as her claim petition was dismissed due to nonappearance of the lawyer. He further submitted that vide order dated 16.9.1997, the Tribunal had already given permission to the petitioner to adopt such remedy which was available to her for restoration of the claim petition which was dismissed on 1.5.1996 and, therefore, in pursuance of that observation, the petitioner has moved the present application under Order 9 Rule 9 of the Code of Civil Procedure for restoration of the claim petition.

6. I have heard learned counsel appearing on behalf of the petitioner and with his assistance have gone through the record of the case and am of the opinion that there is no illegality in the impugned order. There is no dispute that due to the fault of the lawyer, litigant should not suffer. The second claim petition was not legally maintainable because the previous petition was dismissed in default under Order 9 Rule 8 CPC and the provisions of the Code of Civil Procedure are applicable to the limited extent in such proceedings. The petitioner or her counsel were never vigilant that the second petition before the Tribunal was not legally maintainable. It was too late on the part of the petitioner to make an application for restoration of the claim petition which was dismissed in default on

1.5.1996. Had the petitioner not filed the second petition, there would have been some force in the argument raised by the learned counsel, but keeping in view the fact that the petitioner had availed the illegal remedy by filing the second petition, which was rightly dismissed by the Tribunal and, therefore, she has filed the present application under Order 9 Rule 9 of the Code of Civil Procedure which was hopelessly barred by limitation and this aspect of the case has been rightly considered by the Tribunal. It is true that some compassion do lead in favour of the petitioner but law has to take its own course.

In view of the matter, the present revision is dismissed in limine.

Revision dismissed.