

(2011) 08 SHI CK 0209
In the High Court Of Himachal Pradesh
Case No : FAO No. 474 of 2008

Kulwinder Kaur and Others	Vs	APPELLANT
Anita Kumari and Others		RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 3, Order 16 Rule 2, Order 23 Rule 1, Order 23 Rule 2, Order 5 Rule 13
Himachal Pradesh Motor Vehicles Rules, 1999 — Rule 232 , 233
Motor Vehicles Act, 1988 — Section 140, 169, 173

Citation : (2011) 08 SHI CK 0209

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.

CMP(M) No. 804 of 2008, CMP No. 701 of 2008& FAO No. 474 of 2008

1. Respondents No. 2 and 3 served, but not present. Hence proceeded against ex-parte. Name of Respondent No. 6 stands deleted.

2. Brief facts of the case are that Respondents No. 1 to 5 filed a claim petition before the Motor Accident Claims Tribunal, Hamirpur, praying that Kamal Dutt, predecessor in interest of the claimants, had died in a motor vehicle accident involving Pick-up Van Sumo No. HP 22 - 6436 and truck No. CHW-4623. It is alleged that the truck in question was being driven by Respondent No. 2, Charanjit Singh, in a rash and negligent manner and hence, the accident was caused.

3. I have perused the record of the learned Tribunal and I find that initially the petition was filed showing Charanjit Singh to be the owner of the vehicle in question. Summons were issued to Charanjit Singh, but he did not put in appearance. Thereafter, it transpired that the vehicle in question, i.e. truck No.

CHW-4623, was actually owned by Gurdev Kaur and Charanjit Singh was driving the vehicle in question. The learned Tribunal held that though Charanjit Singh had been proceeded against ex-parte, that was in the capacity of the owner and not as driver and, therefore, on 21.11.2001, fresh notices were ordered to be issued to Charanjit Singh. Again Charanjit Singh did not appeared despite service of summons and was proceeded against ex-parte. Thereafter, the award was announced and both Gurdev Kaur and Charanjit Singh were held jointly and severally liable to pay the awarded amount of ` 4,03,500/-alongwith interest thereupon.

4. Thereafter, execution petition was filed and property of Charanjit Singh was ordered to be sold in the execution proceedings. At this stage, the present Appellants, who are the legal heirs of Charanjit Singh, filed the present appeal. According to them, they acquired knowledge about the pendency of the case before the learned MACT only after such notice was received. Now, the Appellants have filed the applications seeking permission to challenge the award being legal heirs of Charanjit Singh, praying for condonation of delay in filing the appeal on the ground that they were not aware about the pendency of the proceedings and lastly, they submitted that since the award has been passed against a dead person, it is null and void and as such not legally executable. The application for permitting the Appellants to challenge the award being legal heirs of Charanjit Singh and the application for condonation of delay are allowed in view of the averments made by the Appellants that they came to know about the impugned award only after the property was attached.

5. Now, coming to the merits of the case, the question is whether the award, which has been passed against Charanjit Singh, who admittedly died before arguments were heard in the matter, is a nullity and is not binding.

6. On behalf of the Respondents, Mr. Tarlok Chauhan submits that in terms of Order 22 Rule 4 Sub-rule (4) of the Code of Civil Procedure, since Charanjit Singh had not put in appearance nor filed any written statement, it was not necessary to bring his legal heirs on record. To appreciate this contention, it would be relevant to refer to Order 22 Rule 4 Sub-rule (4) of the Code of Civil Procedure:

ORDER XXII

xxx xxx xxx

4. Procedure in case of death of one of several Defendants or of sole Defendant.

xxx xxx xxx xxx

(4). The Court whenever it thinks fit, may exempt the Plaintiff from the necessity of substituting the legal representatives of any such Defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said Defendant notwithstanding the death of such Defendant and shall have

the same force and effect as if it has been pronounced before death took place.

7. Rule 4 lays down that where one out of the Defendants dies and the right to sue does not survive against the surviving Defendant, then the legal representatives must be brought on record within the period of limitation, failing which the claim petition will abate. Sub-rule (4) is an exception incorporated in the CPC vide the CPC (Amendment) Act, 1976. Under this Sub-rule, the Court may exempt the Plaintiff from the necessity of substituting the legal representatives. This pre-supposes that there has to be a conscious decision of the Court to grant exemption. This obviously means that somebody should approach the Court, saying that a particular Defendant has died, but the petition does not abate, because he had not appeared in the case, not had he filed the written statement. The Court may grant the exemption, but there can be circumstances where the Court may refuse to grant such an exemption. Whether exemption has to be granted or not is a matter to be considered by the learned Tribunal.

8. A Full Bench of this Court in *Lata Vs. United India Insurance Co. Ltd. and Others*, considered the question regarding applicability of the provisions of the CPC to proceeding under the Motor Vehicles Act. The Full Bench referred to the provisions of Sections 169 and 176 of the Motor Vehicles Act and made the following observations:

23. As is apparently seen, Clause (d) of Section 176 of the Act clearly empowers the State Government to make rules with respect to the form and the manner in which an appeal may be preferred against an award of a Claims Tribunal. The expressions "form" and "manner" are wide enough to include a possible stipulation about the applicability of the provisions of Order XLI Rules 22 and 33 of the CPC to appeals filed u/s 173 of the Act. In exercise of this power, amongst various other powers, the State Government did frame Rules called "Himachal Pradesh Motor Vehicles Rules, 1999". Rules 232 and 233 of these Rules are relevant for our purposes and these read thus:

232. The CPC to apply in certain cases. -The following provisions of the First Schedule of the Code of Civil Procedure, 1908, shall so far may be, apply to proceedings before the Claims Tribunal, namely, Order Virgules 9 to 13 and 15 to 30; and Order IX; Orderlies; Rules 3 to 10; order XVI; Rules 2 to 21; Order XVII, Order XLI and Order XXIII, Rules 1 to 3.

Sections 169 and 170(b).

233. Form and manner of appeals against the award of Claims Tribunal.-An appeal against award of a Claim Tribunal shall be preferred in the form of a memorandum stating concisely the ground on which the appeal is preferred, it shall be accompanied by a copy of the judgment and the award appealed against.

Sections 173 and 176(C)

24. As is seen, whereas under Rule 232 certain provisions of the CPC have been

made applicable to the proceedings before the Tribunal, under Rule 233 it has only been laid down as to how the appeals are to be filed against the awards of the Tribunal. Rule 232 of course does not relate to appeals, as it refers only to the proceedings before the Tribunal. In Rule 233 of course the State Government could have incorporated a provision about the applicability of Order XLI Rules 22 and 33 of the CPC to the appeals under the Act but this not having been done, we cannot import either into the Act or into the aforesaid 1999 Rules any provision with respect to the aforesaid applicability of Order XLI of the CPC to the appeals filed under the Act with the result that we have to hold and declare that there is No. right of filing Cross Objections, same not having been created by any statute and hence it not being in existence. It shall however be open to the State Government to consider affectively the desirability of suitably amending 1999 Rules to incorporate appropriately in these Rules, for example, in Rule 233 by way of its own amendment, or otherwise by introducing a new rule, that Order XLI of the CPC shall apply to the appeals filed under the Act, as it applies to appeals filed under the Code of Civil Procedure. We accordingly direct the State Government to consider this issue, in its true perspective and in best public interest and, if it at all decides to carry out the above indicated amendment in 1999 Rules, to do the needful in that direction within two months from today. The decision has to be of the State Government in the exercise of its rule making power and we have No. intention of issuing any direction, much less a binding direction as to how and in what manner this decision should be taken. Only, that the decision, one way or the other, has to be taken in a time bound manner. We, therefore, direct the Law Secretary, Government of Himachal Pradesh to inform the Registrar General of this Court about the action taken, one way or the other, before 31st December, 2004. A copy of this judgment accordingly shall be set to the Law Secretary, Government of Himachal Pradesh for his information and compliance.

It is, thus obvious that only those provisions of the Code which are made specifically applicable will apply to the proceedings under the Motor Vehicles Act. Order 22 has not been made applicable. Therefore also, there would be virtually No. limitation for bringing on record the legal representatives.

9. For the aforesaid reasons, the appeal is allowed. The matter is remanded to the learned MACT. Since the Petitioners have now filed this appeal and have been permitted to be brought on record, the claimants shall not be required to file a fresh application to bring them on record before the learned Tribunal and they may straightaway file the amended petition giving the amended memo of parties. The learned Tribunal shall give an opportunity to the present Appellants to file written statement and thereafter, shall decide the matter afresh keeping in view the fact that the accident occurred in the year 2000. The learned Tribunal is directed to dispose of the petition at the earliest and in any event, not later than 31st March, 2012.

Parties through their counsel are directed to appear before the learned MACT on

5th September, 2011. The Registry is directed to ensure that the records of the learned Tribunal is sent back at the earliest so as to reach the Tribunal well before the said date. Amount of ` 25,000/-, deposited by the Appellants shall be sent back to the learned Tribunal and shall be treated as a part of payment u/s 140 of the Motor Vehicles Act.