
(2013) 07 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 931 of 2003

Kulwinder Kaur

APPELLANT

Vs

Satnam Singh and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2013) 07 P&H CK 0187

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : A.S. Gill, for the Appellant; Nitin Rathee, Advocate, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—This is revision petition by claimant Kulwinder Kaur filed under Article 227 of the Constitution of India impugning order dated 5.9.2002 passed by learned Motor Accident Claims Tribunal, Jalandhar (in short, the Tribunal) thereby dismissing the execution petition filed by the petitioner-claimant. Petitioner filed claim petition u/s 166 of the Motor Vehicles Act, 1988 (in short, the Act) claiming compensation for the death of her son Love Preet Singh aged two years caused in motor vehicular accident. Respondents no. 1 to 3 were impleaded as driver, owner and insurer respectively of the alleged offending vehicle whereas respondent no. 4 is father of the deceased child and he was also to receive the compensation along with petitioner. Only respondent no. 3 insurer of the vehicle contested the claim petition whereas respondent no. 4 admitted the claim of the claimant, and respondents no. 1 and 2 (driver and owner respectively) were proceeded against ex parte.

2. The claimant filed application u/s 140 of the Act claiming compensation on the principle of "no-fault-liability". The said application was allowed by the Tribunal vide order dated 18.9.1998 Annexure P/1 thereby directing respondents no. 1 to

3 to pay amount of Rs. 50,000/- as compensation on the principle of "no-fault-liability" to petitioner and respondent no. 4. Respondents no. 1 to 3 were held jointly and severally liable to pay the same. On account of said order, the main claim petition was dismissed as withdrawn vide order of even date i.e. order dated 18.9.1998.

3. The claimant filed execution petition for recovery of the amount of Rs. 50,000/- as per order dated 18.9.1998 passed by the Tribunal. Respondent no. 3 contested the execution petition by pleading that amount of Rs. 50,000/- was paid to the claimant by respondents no. 2 and 4 on 18.9.1998 itself as per statement made by counsel for the claimant before the Tribunal and therefore, the execution petition is not maintainable. This plea of respondent no. 3-insurer has been upheld by the executing court and accordingly, the execution petition filed by the petitioner has been dismissed by the Tribunal vide order dated 05.9.2002 which is under challenge in this revision petition.

4. I have heard counsel for the parties and perused the case file.

5. Counsel for the petitioner contended that the amount of compensation was not paid to the claimant and the execution petition has been erroneously dismissed by the Tribunal.

6. On the other hand, counsel for respondent no. 3 laid stress on statement Annexure P/2 made by counsel for the claimant that the compensation amount had been paid to the claimant by respondents no. 2 and 4 and consequently, defended the impugned order of the Tribunal.

7. Pursuant to order of the preceding date, photostat copy of record of the Tribunal pertaining to claim petition as well as execution petition has been received and has been perused with assistance of counsel for the parties. Perusal thereof reveals that respondent nos. 1 and 2 had been proceeded against ex parte when detailed order dated 18.9.1998 Annexure P/1 was passed awarding amount of Rs. 50,000/- to claimant and respondent no. 4 as compensation on the principle of "no-fault-liability" to be paid jointly and severally by respondents no. 1 to 3. Consequently, statement Annexure P/2 by counsel for the claimant made on the same date that the amount had been paid to the claimant by respondents no. 2 and 4 cannot be accepted as factually correct. In fact respondent no. 4 was not to pay the amount but was to receive the amount along with claimant-petitioner. Respondent no. 2 also could not have paid the amount because respondent no. 2 was ex parte and was not even represented before the Tribunal on that date. In addition to it, when respondents no. 1 to 3 were held jointly and severally liable to pay the amount, respondents no. 1 and 2 being driver and owner respectively of the vehicle would not have paid the said amount because of liability of respondent no. 3-insurer to pay the same. Admittedly, respondent no. 3 - insurer has not paid the said amount. It is, thus, manifest that the compensation amount of Rs. 50,000/- has not been paid to the claimant and respondent no. 4.

8. Aforesaid conclusion is further fortified by separate short order dated 18.9.1998 passed by the Tribunal. According to said order, counsel for the petitioner stated that since interim compensation had been ordered to be paid, the main petition u/s 166 of the Act be dismissed as withdrawn. Thus, in the said short order, it was not recorded that the compensation amount of Rs. 50,000/- had actually been paid to the claimant. Even otherwise, immediately after passing of the order, amount was not likely to have been paid by any of the respondents on the same day.

9. It is, thus, manifest that the compensation amount of Rs. 50,000/- awarded by the Tribunal vide order dated 18.9.1998 has not been paid to petitioner and respondent no. 4 and statement Annexure P/2 made by counsel for the claimant is factually incorrect. Consequently, impugned order of the Tribunal dismissing the execution petition on the ground that the amount already stood paid is illegal and against facts and suffers from jurisdictional error.

10. As a necessary consequence, the instant revision petition is allowed. Impugned order dated 5.9.2002 passed by the Tribunal is set aside. Execution petition is restored to the files of the Tribunal for proceeding with the execution proceedings in accordance with law. Parties are directed to appear before the Tribunal on 21.8.2013.

11. The claimant and respondent no. 4 have already suffered because the amount of compensation awarded on the principle of "no-fault-liability" has not been paid for almost 15 years although its purpose is to provide immediate relief to the aggrieved person. Accordingly, respondent no. 3 - insurer is directed to pay the compensation amount with interest in accordance with order dated 18.9.1998, within two months from today. Pending civil miscellaneous application, if any, stands disposed of as infructuous.