
(2007) 01 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2153 of 2005

Minny Thind

APPELLANT

Vs

Bimla Devi and others

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Citation : (2007) 2 PLR 333 : (2007) 2 RCR(Civil) 203

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. S.S. Swaich, Advocate, Mr. Neeraj Khanna and Mr. Ravinder Arora, Advocates., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—By way of present revision petition, the petitioner has challenged the order dated 8.1.2005 passed by the Motor Accident Claims Tribunal, Sangrur (for short the `Tribunal") dismissing the three applications filed by the claimants.

2. The petitioner had moved three applications. First application was to give liberty to the respondent Insurance Company to verify the documents through web site, telephonically or in any other manner. This application was filed on 3.3.2004. However, the same was not decided by the learned Tribunal. The second application was moved on 25.11.2004 for appointment of a Local Commissioner for recording the statements of witnesses regarding income, salary and expenses on medical treatment of the deceased and injured claimants. Along with this application an application was also moved to lead additional evidence. The petitioner had placed on record the documents duly authenticated by the Notary Public regarding the salary and income tax record of Rupinder Kaur, deceased as well as of the applicant Minni Thind and Tapinder Thind with a request to the Insurance Company to verify the same through web site or telephonically or in any other manner. However, the Insurance Company did not verify the same and, therefore, a request was made that a local Commissioner be appointed to verify the said documents including record of incometax and medical treatment for just and proper adjudication of the case. It

was further claimed that Shri Deepinder Singh Thind is still under treatment. The application for additional evidence was also made to prove these documents by appointment of a Local Commissioner as the proof of income of late Smt. Rupinder Kaur as well as the injured applicants including their medical evidence was necessary for assessment of the compensation payable to them.

3. In order to explain the delay it was pleaded that earlier similar application was moved with the hope that the Insurance Company would get the same verified. The application moved by the petitioner was rejected primarily on the ground that the parties have closed their evidence and further that the petitioner has failed to satisfy the Court as to why the said application was moved after such a long period. It was further observed by the Tribunal that the evidence sought to be produced now was within the knowledge of the claimants when they were leading their evidence and, therefore, the Local Commissioner cannot be sent to Canada to collect the evidence regarding these documents.

4. Mr. S.S. Swaich, learned Counsel appearing on behalf of the petitioner, has challenged the order passed by the learned Tribunal primarily on the ground that there was no delay on the part of the petitioner as the necessary documents were produced on record well in time with liberty to the Insurance Company to get the same verified. It was on account of this that the application could not be moved earlier. It was also claimed that the learned Tribunal was not right in rejecting the application merely on account of delay though the documents sought to be proved were necessary for just and proper adjudication of the case.

5. I find force in the contention raised by the learned counsel for the petitioner. It is a settled law that the procedural laws are meant to advance justice and not to thwart the same. The petitioner cannot be attributed any negligence as an attempt was made to get these documents exhibited by giving liberty to the Insurance Company to verify the same.

6. The learned counsel for the petitioner further relied upon a judgment of the Hon''ble Supreme Court in case of M/s Filmistan Private Limited, Bombay v. M/s. Bhagwandas Santprakash and another, AIR 1971 SC 61, wherein the Hon''ble Supreme Court has been pleased to lay down as under :

"It was further argued that as there is no reciprocal agreement between our Government and the Government of Afghanistan, the witnesses cannot be lawfully examined in Kabul. Section 77 of the Code of Civil Procedure read with Section 75 empowers the Court to issue a letter of request to any person other than a Court to examine witnesses residing at any place not within India. The power of the Court is not subject to any reciprocal agreement between the Governments. We do not know whether there is any law in Afghanistan prohibiting the examination of witnesses by Consular authorities. Nor is there any material before us on the basis of which we can decide whether the Commissioner can administer oath or not. These questions do not appear to have been urged before the trial Court. The question whether the evidence recorded

by the Commissioner is legally admissible or not can certainly be canvassed at the trial of the case. It is not necessary to go into that question at present."

In view of what has been stated above, the revision petition is allowed and order passed by the learned Tribunal is accordingly set aside.

7. The petitioner submits that he is willing to bear the expenses of the Local Commissioner as well as the counsel for the respondents for examining the persons in Canada to prove the documents produced on record regarding the income and the medical expenses of the deceased as well as the injured claimants. Learned counsel appearing for respondent No. 3 does not oppose this. Accordingly, following directions are issued :

(i) Shri Dharam Vir Sharma, Advocate, Ex. Additional Advocate General, Punjab, resident of H. No. 2220, Sector 15C, Chandigarh is appointed as a Local Commissioner to record the evidence sought to be produced by way of additional evidence. The Local Commissioner shall be paid 1500 US Dollars (US Dollar Fifteen hundred only) as Commission fee. In addition to this, the petitioner shall bear his travel expenses as well as the expenses for his stay in Canada.

(ii) The petitioner shall also bear the expenses for travelling and stay of Mr. Ravinder Arora, Advocate, or any other Advocate to be appointed by the respondents for the said purpose. The Local Commissioner shall record the evidence & submit duly authenticated copy of his report/evidence to the learned Tribunal within a period of three months from the date of receipt of a certified copy of this order.

(iii) The petitioner through his counsel is directed to arrange for fee payable to the Local Commissioner as also the tickets as well as the stay of the local Commissioner and the counsel for the respondents well before their departure for Canada.

(iv) The learned Tribunal is directed to proceed with the matter after the receipt of the report/evidence duly recorded by the Local Commissioner.