
(2019) 09 SHI CK 0156
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 354 Of 2019

New India Assurance Company Limited	APPELLANT
Vs	
Jasvir Kaur & Others	RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Citation : (2019) 09 SHI CK 0156

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Praneet Gupta, O.C. Sharma

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. As per report of the Registry, respondents No.1, 2 and 4 stand served. Further, as per report of the Registry, notice issued to respondent No.3 is still awaited. Learned counsel for the petitioner submits that for the purpose of adjudication of the present petition, presence of respondent No.3 is not necessary. As none has put in appearance on behalf of respondents No.1 and 2, they are ordered to be proceeded against ex parte.

2. By way of this petition, petitioner has challenged order dated 10.05.2019, vide which evidence of present petitioner, who is a respondent before the learned Tribunal, has been closed by the learned Tribunal by passing the following order:-

"Witness Amrit Pal dealing clerk RTO office Faridkot not present despite of service. Sh. V.K.Sharma, Advocate, for respondent No.3 vide his separate statement tender in evidence Policy Ext.RX, driving licence verification Mark-A, letter of investigator Mark-B and driving licence Mark-C on behalf of respondent No.3.The respondent evidence is closed by order of Court. Now put up the file for arguments on 29.5.2019".

3. Learned counsel for the petitioner has argued that the impugned order per-se

is perverse and not sustainable in law as while passing the said order, learned Tribunal erred in not appreciating that all that could have been done by present petitioner to ensure presence of the witness was done and because the witness who was to depose in the Court was not the employee of present petitioner, petitioner could not have forced him to appear in Court. He further submitted that in case the witness was not responding to the notices, which were duly served upon him to appear in the witness box, then duty was cast upon the Court to have had secured his presence and for the acts or omission of the said witness, petitioner could not have been punished/ made to suffer as has been done by the learned Tribunal by passing the impugned order.

4. Learned counsel has relied upon the judgment passed by Hon'ble Coordinate bench of this Court in CMPMO No.193 of 2015, dated 02.07.2015, titled as Yashwinder Singh Parmar Versus Sushil Kumar Sharma and others.

5. Having heard learned counsel for the petitioner as also respondent No.4 and having perused the impugned order as well as other documents appended with the petition, as also the judgment passed by Hon'ble Coordinate Bench, in my considered view, the impugned order is not sustainable in the eyes of law. In case witnesses do not turn up despite service of notice upon them, then no fault can attributed to the parties who have summoned the said witnesses. In these circumstances, a duty is cast upon the Court, in the interest of justice, to facilitate the party concerned to procure the presence of the witness. This important aspect of the matter has been ignored by the learned Tribunal while passing the impugned order.

6. Accordingly, this petition is allowed. Impugned order dated 10.05.2019 is quashed and set aside with the direction that a date shall be fixed for recording evidence on behalf of the remaining witnesses of present petitioner and Court assistance for summoning the witnesses shall be provided and in case after service witness(s) do/does not turn up, then appropriate order(s) in this regard shall be passed by the learned Tribunal. Petition is disposed of. Pending miscellaneous applications if any, also stand disposed of in above terms. Interim order, if any, also stands vacated.

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