
(2011) 03 SHI CK 0119
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 356 of 2010

Oriental Insurance Company Limited	Vs	APPELLANT
Padmawati and Others		RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2011) 03 SHI CK 0119

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—This order shall dispose of the petition under Article 227 of the Constitution of India filed by the Petitioner/Insurance Company against the order passed by the learned Motor Accident Claims Tribunal, dated 6.9.2010, vide which, the application filed by the claimants u/s 151 CPC for taking on record additional evidence was allowed.

2. I have heard the learned Counsel for the parties and have gone through the record of the case.

3. A perusal of the impugned order shows that the claim petition filed by the claimants was pending before the learned Tribunal, which was fixed for pronouncement of judgment and at that stage, an application u/s 151 CPC was filed for taking on record additional evidence. It was alleged in the application that it has been revealed that the Investigating Officer has not been examined due to oversight, who is essential in the case. Hence the application filed by the claimants.

4. In the reply filed by the present Petitioner/Insurance Company, they had taken the objection, which are also being taken before this Court, that the application was not maintainable as the case was fixed for judgment. To substantiate his submission, the learned Counsel for the Petitioner has relied upon the decision in Arjun Singh Vs. Mohindra Kumar and Others, which shows that it was observed

by their Lordships that where the court has adjourned the hearing of the suit ex parte, the entire hearing is complete and that the suit is adjourned for pronouncing the judgment, the application under Order 9 Rule 7 does not lie.

5. Reliance was also placed upon the decision in Wasudeo Sonone and Another Vs. Jagannath Ramlalji Jugele, which shows that the expression "at any stage" means that when the case has been closed for judgment, application by Defendant to cross examine the Plaintiff and adduce evidence is not maintainable.

6. Another decision relied upon by the learned Counsel for the Petitioner is of a learned Single Judge of this Court in Jagat Ram and Anr. v. Ravi Kant and Ors. 2011(1) Him L.R. 103, wherein also, an application was filed under Order 9 Rule 7 CPC and it was held that the application is not maintainable when the case is fixed for pronouncement of judgment.

7. The present case has been filed by the claimants under the Motor Vehicles Act. The Motor Accident Claims Tribunal can adopt its own procedure for disposing of such application. Strict rules under the CPC and the Evidence Act do not apply to such proceedings, though they are required to be followed by the Motor Accident Claims Tribunal.

8. Keeping in view the fact that the claimants cannot be made to suffer for non-examination of a material witness, which fact was detected by the learned Counsel for the claimants before the pronouncement of the judgment and the application was filed, I am of the opinion that the impugned order does not suffer from any infirmity and as such the present petition is dismissed. The parties, through their counsel, are directed to put up appearance before the learned Tribunal on 4.4.2011, who shall issue notice to the claimants, who are not represented here. The learned Tribunal shall try to dispose of the claim petition at an early stage since the case is old one. The Registry is directed to send the records of the case alongwith a copy of this judgment to the learned Tribunal, so as to reach there well before the date fixed.

9. The petition stands disposed of accordingly, so also the pending application(s), if any.