

(2008) 01 JH CK 0039
In the Jharkhand High Court

Prawej Ansari

APPELLANT

Vs

Hatim Ali Ansari and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Citation : (2008) 1 JCR 597

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard the parties finally.

2. Petitioner has challenged the order dated 4.5.2005, passed in M.J.C. Case No. 43/2000 allowing the prayer of the Insurance Company to recover the amount from the petitioner-owner of the vehicle and also the order dated 22.8.2005, passed in the same case refusing to review the said order.

3. The only grievance of the petitioner is that a copy of the application on which the said order was passed on 4.5.2005 was not served on him and he was not given opportunity of hearing. It was further submitted that the said application was not maintainable.

4. Counsel for the Insurance Company submitted that the petitioner (owner of the vehicle) appeared in the main claim case and filed written statement but thereafter chose not to appear. The case was fixed for hearing ex parte. He further submitted that a clear finding was recorded by the Tribunal that the vehicle in question was being driven by a minor boy. He submitted that as the tribunal inadvertently missed to give liberty to the Insurance Company to recover it from the owner, the Insurance Company had to file the said application for correction/modification of the order. He further submitted that petitioner cannot be allowed to reopen the judgment of the Tribunal as no appeal was filed by him against the judgment dated 16.4.2005. He further submitted that in such circumstances, it cannot be said that the said application was not maintainable.

5. I find force in the submission of learned Counsel for the Insurance Company

that petitioner cannot be allowed to reopen the findings recorded by the Tribunal and that the said application was maintainable. However, it being an admitted position that a copy of the application on which order dated 4.5.2005 was passed was not served on the petitioner, I am inclined to give one chance of hearing to him.

6. Accordingly, the orders dated 4.5.2005 and 22.8.2005 are set aside. Petitioner will appear in the Court concerned on 4.2.2008 and will receive a copy of the said application, which will be served on him by the Insurance Company. Petitioner may file its reply within two weeks thereafter. The Court concerned will dispose of such application in accordance with law as early as possible and preferably within two months thereafter.

7. It is made clear that petitioner will not be allowed to challenge the findings recorded in the judgment dated 16.4.2005 passed by the Tribunal. Petitioner can only raise the points of law, if any, with regard to the liability to pay, but based on the findings already recorded in the said judgment.

8. With these observations and directions, this writ application is disposed of.