
(2013) 09 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2846 and 2849 of 2011

Smt. Suresh Devi and Others

APPELLANT

Vs

Jasbir Singh and Others

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2014) 173 PLR 466

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Judgement

Paramjeet Singh, J.—This order shall dispose of Civil Revision No. 2846 of 2011 titled "Smt. Suresh Devi and, others v. Jasbir Singh and others" and Civil Revision No. 2849 of 2011 titled "Smt. Saroj Bala and others v. Jasbir Singh and others", as they arise out of the same order. For the sake of brevity, facts are being taken from Civil Revision No. 2846 of 2011.

2. Instant revision petition has been filed for setting aside the order dated 3.01.2011 passed by Motor Accident Claims Tribunal (hereinafter MACT), Mohali, whereby the claim petition moved by the petitioners has been dismissed on the ground that earlier the petitioners had filed a petition on same facts before MACT Ambala which was dismissed as withdrawn on 18.05.2009 without permission to file fresh one same cause of action.

3. I have heard the learned counsel for the parties and perused record.

4. Learned counsel for the petitioners vehemently contended that principles of CPC are not strictly applicable to the present case. Learned counsel contended that if the first claim petition was not decided on merits, second claim petition is maintainable. In support of his contention he relied upon the judgment of this court passed in FAO No. 1977 of 2010 titled "Smt. Kuldeep Kaur and Ors. v. Kanwaldeep Singh and Others" decided on 10.11.2010.

5. Per contra learned counsel for the respondents contended that since the

petition before MACT Ambala was withdrawn without any liberty to file fresh one therefore the second claim petition is not maintainable by virtue of Order 23 Rule 1 of CPC (hereinafter referred to as "CPC") and has rightly been dismissed. Moreover, the petitioners cannot be allowed to choose forum as per their convenience. It amounts to abuse of judicial process.

6. In backdrop of above factual matrix and contentions advanced by the learned counsels for the parties, the question to be determined by this court is "whether the provisions of Order 23 Rule 1 CPC would operate as bar to second claim petition filed under Motor Vehicles Act if the first was dismissed as withdrawn without any liberty to file fresh?

7. On numerous occasions the courts have been called upon to determine the applicability of provisions of CPC in proceedings before MACT and by now it is settled that since Motor Vehicles Act, 1988 (in short "the Act") is a beneficial legislation, therefore technical provisions of CPC are not strictly applicable to the proceedings before MACT.

8. The question of maintainability of second petition after dismissal of first being withdrawn or on any other technical ground have arisen before this court and other Hon'ble High Courts. The Division Bench of Rajasthan High Court in Vimla Devi and Another (Smt.) Vs. Rajendra Kumar and Others, has considered the issue of maintainability of second claim petition when first was dismissed in default. In that case the second claim petition was dismissed by invoking the provisions of Order 7 Rule 11 CPC. Nevertheless, court held that such fresh petition is maintainable. In Dinesh Kumar v. Sunil Kumar W.P. No. 2021 of 2008 decided on 06.11.2012, wherein, the second claim petition was dismissed by MACT Seoni as the petitioner had already preferred a claim petition before MACT Lakhnadon, Madhya Pradesh High Court observed as under:

...In view of the aforesaid on examining the present matter, it is apparent that the petitioner has not adopted the way to restore the aforesaid earlier claim petition filed before the claims tribunal of Lakhnadon. He had also not adopted the process to file the appeal against the order of MACT Lakhnadon. The review petition was also not filed by him but he has filed the fresh claim petition because the limitation was available to him to file the same.... In view of the aforesaid it is apparent that the limitation was available to the petitioner to file the fresh claim petition before the tribunal and the same could have been filed by him either in the territorial jurisdiction of MACT Lakhnadon where the alleged accident was happened or the same could have been filed within the territorial jurisdiction of MACT Seoni in whose jurisdiction the petitioner was residing. In view of aforesaid discussion when the petitioner was entitled to file the fresh claim petition for which the limitation was available to him then he had also the right to choose the forum for filing the claim petition before any of the tribunal either where the alleged accident was happened or within the territorial jurisdiction of MACT Seoni in whose territorial jurisdiction the petitioner was residing and in such premises, the petitioner rightly filed the claim before the

claims Tribunal of Seoni.

9. Perusal of aforesaid decision indicates that even in case of dismissal where claimant prefers fresh petition he cannot be non-suited due to mere technicalities of procedure, for rules of procedure are intended to serve as handmaiden of justice not to defeat it. In the case at hand the second petition was dismissed by MACT Mohali vide impugned order on sole ground that the first petition which was filed before MACT Ambala was dismissed as withdrawn and no liberty was granted to file fresh one. Dealing with similar situation Co-ordinate Bench of this High Court in Smt. Kuldeep Kaur and Ors. v Kanwaldeep Singh, FAO No. 1977 of 2007 decided on 10.11.2010 has observed as under:

.....The Motor Vehicles Act so far as it makes provision for claiming compensation in Tribunal specially constituted under the Act enacts a welfare principle and I cannot apply Order 23 Rule 1 provisions indiscriminately without minding whether it causes any prejudice to the contesting parties or not. If the vehicles had been involved and the accident was true, the dismissal of the petition for default or abandonment of proceedings before Tribunal and prosecution of the case in yet another Tribunal on the same particulars of accident cannot be treated in isolation without seeing whether such a proceeding has caused any material prejudice. If the merits of the claim cannot be attacked, I cannot allow a technical plea of abandonment of case by taking a permission for filing a petition before another Tribunal as barring a fresh petition. The finding regarding maintainability of the petition is therefore, set aside.

10. Moreover, another co-ordinate bench of this court in Bimla Devi and Anr. v. Raj Bala and Ors. CR No. 4995 of 2008 decided on 10.03.2009 has held that the provisions of Order 23 Rule 1 of CPC are not applicable to proceedings before MACT. However, in that case besides non applicability of Order 23 Rule 1 the court based its finding on the fact that withdrawal of first petition was conditional.

11. The judicial approach thus seems to be liberal in regard to prosecution of claim petitions under the Act. The dismissal of the claim petition otherwise then on merits, has not been held to be a bar to fresh petition irrespective of the fact whether the first petition was dismissed as withdrawn or was dismissed in default.

12. In light of legal position stated above, I am of the considered view that in the instant case, the second petition filed by claimant in MACT Mohali ought not to have dismissed on the ground that no liberty was sought to file fresh petition when the earlier petition was withdrawn from MACT Ambala. If the petition is otherwise maintainable it should not have been dismissed on technical grounds. The claimant not only has the right to file fresh petition but it can also choose the forum wherein such petition may be filed. In view of above, present revision petition is allowed. The impugned order 3.01.2011 is set aside. MACT Mohali shall proceed with the claim petition in accordance with law.