
(1990) 12 P&H CK 0019
In the Punjab And Haryana At Chandigarh

Ved Parkash

APPELLANT

Vs

Premo and Others

RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1991) 1 ACC 594

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

J.V. Gupta, J.—This petition under Article 227 of the Constitution of India is directed against the order of the Motor Accidents Claims Tribunal dated 15.12.1989 whereby the application filed by the petitioner for setting aside an ex-parte award was dismissed.

2. The accident took place in March, 1987. The claim petition was filed by Premo widow of Sam under Singh, the deceased. In the said petition, Ved Parkash was impleaded as the owner of the truck which caused the accident. The driver of the truck was also impleaded. When in spite of service none of them appeared, an ex pane award was given by the Tribunal in September, 1988. Later on, Ved Parkash filed an application for settling aside the said ex pane award on the ground that he was never served. The said application was contested on behalf of the claimants. The Tribunal, after framing the issues and allowing the parties to lead evidence came to the conclusion that Ved Parkash was duly served though he refused to accept the summonses, and, therefore, there was no ground for setting aside the ex pane award. Moreover, the application for setting aside the award was also barred by time as Ved Parkash had knowledge of the proceedings on 14.3.1988 whereas the application was filed on 14.12.1988.

3. The learned Counsel for the petitioner submitted that as a matter of fact, neither the petitioner was the owner of the abovesaid truck and secondly, the said truck was insured with the Oriental Insurance Co., and, therefore, the said Insurance Co. should have been impleaded as a party and that no order could be

passed against him. He further submitted that it was one Kali Ram who was the truck owner. He got the said truck on sapurdari in the capacity of driver of the owner and not in his own right. On the other hand, the learned Counsel for the respondents submitted that Ved Parkash was the owner of the truck as he got the truck on sapurdari and that he was duly served as he had refused to accept the summonses, According to the learned Counsel, these are the delay tactics on the part of the judgment debtors.

4. I have heard the learned Counsel for the parties. It is most unfortunate that even in this Court nothing has been shown as to who was the owner of the truck and whether the said truck was duly insured. In the absence of any such evidence, it could not be successfully argued that the petitioner Ved Parkash was not the owner of the truck. It is not denied that he got the truck on sapurdari. Under these circumstances, it was for him to produce evidence to show as to who was the real owner of the truck and that the truck was insured. Consequently, this petition fails and is dismissed. However, if the petitioner deposits a sum of Rs. 20.000/- within two months in the Tribunal for payment to the claimants, he may be allowed to lead evidence to show that he was not the owner of the said truck and the said truck was insured. In that situation, if ultimately the Insurance Co. is held liable to make the payment, the petitioner may realise the said amount from the Insurance Co. But in case the petitioner fails to prove that Kali Ram was the owner of the truck or that the truck was not insured, then he will be liable to pay the whole amount awarded by the Tribunal. It may also be made clear that in case the petitioner-Ved Parkash deposits Rs. 20, 000/- and he is able to show that the truck was insured, then the Insurance Co. will be impleaded and delay if any in implicating it as well as the real owner will be condoned.