

National Insurance Company Vs Smt. Megla and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 21, 2002

Acts Referred: Chhattisgarh Motor Vehicles Rules, 1990 " Rule 232

Civil Procedure Code, 1908 (CPC) " Order 2 Rule 1 , Order 2 Rule 2, Order 2 Rule 3, Order 2 Rule 4

Citation: (2003) 1 RCR(Civil) 364

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Kamal Kant, for Pradeep Bedi, for the Appellant; D.D. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

1. This revision petition filed u/s 115 of the CPC 1908 (for brevity the Code") is directed against the order dated 21.9.2000 passed by the Motor

Accident Claims Tribunal, Chandigarh (for brevity "The Tribunal") in MACT Case No. 22411 of 23.4.99/17.8.99, dismissing the application of

the petitioner insurance company for sending the interrogatories for examination of the Clerk of Licensing Authority, Ettawa through District Judge,

Ettawa (U.P.).

2. Brief facts of the case are that on 5.4.99 a road accident took place in which one Japani aged about 14 years was killed by truck No. CHIS.

7478 which was insured with the petitioner-company. The claimants who are the mother and father of Japani, filed an application for compensation

to the tune of Rs. 3 lacs from the owner driver and Insurance Company of the truck (for brevity petitioner-company). During the pendency of the

claim petition, the petitioner-company moved an application alleging that the driver licence issued to the driver of the offending truck was issued for

driving motor cycle and light motor vehicle, nor for heavy motor vehicle. It was alleged that driving licence No. 1690/E/95 dated 15.4.1995 issued

by R.T.O. Ettawa was valid from 15.4.1995 to 10.7.2014 which was in the name of the respondent-driver Rajesh Kumar alias Brajesh Kumar

who was the driver of the offending truck when the accident took place on 5.4.1999. In order to examine the Clerk of the Licensing Authority,

Ettawa, interrogatories were prepared and an application was moved under Order 11, Rules 1 to 4 of the CPC in which a prayer was made that

the interrogatories be sent for examination of the concerned Clerk of the Licensing Authority, Ettawa through the learned District Judge, Ettawa

(U.P.). The application has been dismissed by the Tribunal on the ground that under Rule 232 of the Chandigarh Motor Vehicle Rules, 1990 (for

brevity the Rules) the provisions of Order 11, Rules 1 to 4 have not been made available in such like matters. On that basis, the learned Tribunal,

dismissed the application by recording the following order:-

4. After hearing the Id. counsel for the parties, I am of the opinion that there is no dispute about the observations of our own Hon"ble High Court

in cases cited by the Id. Counsel for the applicant, but from the order dated 20.3.1998 passed in Civil Misc. No. 1538-C1/96 in

C.R.No.1221/96 it is not clear whether this case pertained to Chandigarh territory or not. However, from the observations made by the Hon"ble

High Court in CR No. 5238/98, it is clear that this case pertained to the State of Haryana and not Chandigarh. So, in the cited cases the rules

were not applicable but in the case in hand the rules are applicable. Moreover, if it is taken that the case in Civil Misc. No. 1538-C1/98 in CR

No. 1221/96 pertained to the Chandigarh territory, even then it cannot be said that the provisions of the rules 232 of Rules were brought to the

notice of the Hon"ble High Court or not because there is no reference of the same therein. So, the observations made in these authorities are not

relevant for the purpose of the decision of this application. 5. For convenience rule 232 of the Rule is reproduced as under:-

The CPC to apply in case the following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to

proceedings before the claims tribunal, namely order V Rules 9 to 13 and 15 to 30. Order IX; Order XIII, Rule 3 to 10, Order XVI, Rules 2 to

21 Order XVII, Order XXI and Order XXII, Rule 1 to 3.

From the aforesaid rules, it is clear that only the provisions of CPC mentioned in this rule are applicable to the MACT cases in Chandigarh

territory. In this rule there is no mention of Order 11 Rules 1 to 4 of CPC, therefore, the present application being under the provisions of Order

11 Rules 1 to 4 CPC cannot be made applicable in this case. Accordingly, the interrogatories cannot be sent for examination of the concerned

clerk of the Licensing Authority, Ettawa through Id. District Judge, Ettawa (UP) as prayed for.

3. Learned counsel for the respondent has submitted that there is no discrepancy in the order passed by the Tribunal because only those provisions

of the Code would be applicable which have been specified in Rule 232 of the Rules. The Tribunal would not be competent to issue an order for

serving the interrogatories for examination of the concerned Clerk of the Licensing Authority, Ettawa (U.P.). The learned counsel has also

submitted that reference to the judgments of this Court made in para 3 of its order by the Tribunal has rightly been distinguished because the

judgments referred in para 3 would not be relevant and the Tribunal has rightly refused to follow those precedents because those judgments are not

in respect of U.T.Chandigarh where Rule 232 of the Rules apply. Therefore, according to the learned counsel, the revision petition is liable to be

dismissed.

4. After hearing the learned counsel, I am of the considered view that there is no merit in the present revision petition and the same is liable to be

dismissed because the Tribunal is a creation of a statute and cannot assume inherent jurisdiction which could be exercised by the civil Courts. The

Tribunal derives its status and character from the statute. Once Rule 232 does not confer any power on the Tribunal to pass an order under Order

11, Rules 1 to 4 then even if such an order is passed by the Tribunal, it would be without jurisdiction. If the petitioner-company has any suspicion

about the genuineness of the driving licence, it may adopt any other method to prove that the driving licence issued to Rajesh Kumar alias Brajesh

Kumar, the driver of the offending truck was only in respect of motorcycle and light motor vehicle. The revision is thus liable to be dismissed.

5. The judgments rendered in Civil Misc. No. 1538-CII of 1998 in Civil Revision No. 1221 of 1996 titled National Insurance Company Limited

v. Raj Bala, and another and also in Civil Revision No. 5238 of 1998 titled National Insurance Co. Ltd. v. State of Haryana, did not apply

because in State of Haryana Rule 232 of the Rules has no application.

6. For the reasons recorded above, this revision petition fails and the same is dismissed.