

(2011) 03 P&H CK 0368

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1854 of 2011

Keshav Kapila and Another

APPELLANT

Vs

Gulzari and Another

RESPONDENT

Date of Decision: March 17, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Jaswant Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Jaswant Singh, J.

Respondents-Petitioners (Driver and Owner of offending vehicle i.e. Jeep bearing Registration No. HP 55 0042 respectively) have filed the instant revision petition under Article 227 of the Constitution praying for setting aside the impugned order dated 5.1.2011 (P.1) passed by the learned Motor Accident Claims Tribunal, Rupnagar (for short "the Tribunal") whereby their application for setting aside the ex parte judgment/award dated 31.8.2002 (P.2) has been dismissed.

2. It is alleged that the Petitioners came to know of passing of the ex parte award dated 31.8.2002 only when the police officials raided their houses for their arrest in the second week of February 2010. At this stage, the Petitioners moved an application for setting aside the ex parte award dated 31.8.2002. Notice of the same was given to the claimants, who opposed the same by filing reply. The said application has been dismissed vide the impugned order dated 5.1.2011

(P.1) passed by the learned Tribunal, hence the present petition.

3. Heard learned Counsel for the Petitioner and perused the record.

4. Learned Counsel for the Petitioners argues that the Petitioner No. 1 never received any summon nor he was aware of the pendency of the claim petition. So far as Petitioner No. 2 is concerned, it is argued that he appeared through his counsel and filed written statement but he is alleged to be informed by his counsel that there is no need of his appearance on the subsequent dates. It is further argued that no accident had ever taken place due to rash and negligent driving of Petitioner No. 1 as he has been acquitted by the learned criminal court.

5. A perusal of the paper book reveals that the claimants-Respondent Nos.1 & 2 filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (for short ♦the Act of 1988♦) against the present Petitioners and Respondent No. 3 Insurance Company claiming compensation to the tune of Rs. 8,00,000/- (Rs. Eight Lacs) along with interest @ 18% per annum on account of death of Gulam Mohamad-husband of Respondent No. 1 and father of Respondent No. 2 in a motor vehicular accident on 22.6.1997. Upon notice of the claim petition, Respondent No. 1 driver refused to accept the notice and was proceeded ex parte on 24.10.2000 whereas Respondent No. 2 was duly served and he filed written statement opposing the claim petition. Later on, Respondent No. 2 was also proceeded against ex parte on 1.4.2002 for his non-appearance. Respondent No. 3 Insurance Company filed separate written statement and on the pleadings of parties, issues were framed and evidence was led by the claimants as well as Respondent No. 3 Insurance Company. After taking into account the material available on record, learned Tribunal vide its award dated 31.8.2002 decided all the issues in favour of the claimants and against the present Petitioners while awarding a sum of Rs. 3,05,000/- along with interest @ 9% from the date of filing of claim petition i.e. 8.10.1999 till its realization. Present Petitioners were held liable to make the payment jointly and severally whereas Insurance Company was absolved from its liability.

6. A bare reading of paragraph 9 of the impugned order dated 5.1.2011 (P.1) reveals that the original record of the claim petition filed titled as *Gulzari v. Keshav Kapila* was minutely perused by the learned Tribunal, who observed as under:

I find no force in the contention raised by the learned Counsel for Respondent Nos.1 & 2/applicants, because on perusal of the original claim petition file titled as *Gulzari v. Keshav Kapila* which was decided on 31.8.2002, it is clear that the applicants have appeared and filed their written reply to the claim petition, separately. Even Respondent/Applicant Keshav Kapila was proceeded against ex parte in the claim petition. But on the application filed by Keshav Kapila applicant, on 1.12.2000 the ex parte order against Keshav Kapila was set aside and thereafter he filed written reply to the claim petition and contested the same. Similarly, Respondent/Applicant No. 2 Tirath Ram has filed separate written reply to the claim petition and contested the claim petition. But thereafter both Keshav Kapila and Tirath Ram absented from the court and as such they were proceeded against ex parte.

7. A perusal of paragraph 9 reproduced above clearly establishes that both the Petitioners were very well aware of the pendency of the claim petition and they deliberately avoided the proceedings for the reasons best known to them. Learned Counsel for the Petitioner has not disputed that the observations quoted above are contrary to the record of the case. It will also not be out of place to mention here that the stand taken by both the Petitioners is not only factually incorrect but baseless also. The facts and circumstances amply prove that the Petitioners have no respect for courts of law and have successfully evaded their liability while not making the payment in compliance of award passed by the learned Tribunal and poor widow and her minor daughter are unnecessarily being harassed for recovering the amount of compensation on account of death of their sole bread earner, who lost his life due to rash and negligent driving of Petitioner No. 1 of the offending Jeep No. HP 55 0042, which was owned by Petitioner No. 2. Thus both the Petitioners deserve no sympathy for misusing the process of this Court and wasting the valuable time in frivolous litigation.

8. Consequently, finding no illegality or perversity in the impugned order, present petition is dismissed.