

(1998) 03 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3935 of 1997

The New India Assurance
Company Ltd.

APPELLANT

Vs

Satnam Kaur and Others

RESPONDENT

Date of Decision: March 5, 1998

Acts Referred:

- Motor Vehicles Act, 1988 - Section 169(2)

Citation: (1998) 119 PLR 348 : (1998) 3 RCR(Civil) 178

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: L.M. Suri and Deepak Suri, for the Appellant; Jang Bahadur Singh, for the Respondent

Final Decision: Allowed

Judgement

T.H.B. Chalapathi, J.

This revision petition is filed against the order of the Motor Accident Claims Tribunal, Jabalpur refusing to issue a Commission to record the statement of Regional Transport Authority, who is the Licensing Authority under the Motor Vehicles Act to show that the driver did not possess a valid driving licence and the driving licence which was produced in court was a fake one. The Tribunal dismissed the said application on the ground that under Rule 232 of the Punjab Motor Vehicles Rules, 1989, Order XXVI C.P.C. has not been made applicable. Therefore, the Tribunal has no power to issue a Commission upon the said provision. I am of the opinion that the Tribunal Committed an error in exercising the jurisdiction. u/s 169 of the Motor Vehicles Act, 1989, the Claim Tribunal follows such summary procedure as it thinks fit subject to any rule that may be made for holding an enquiry u/s 168 of the Act and under Sub-section (2) of Section 168, the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of

documents. Rule 232 makes certain provisions applicable to the proceedings before the Claim Tribunal. The non-inclusion of Order 26 therein does not amount to say that there is any exclusion of power conferred on a Civil Court under Order 26 C.P.C. A reading of Section 169 clearly shows that the procedure to be followed in the enquiry is summary and the Tribunal has got all the powers of a Civil Court for the purpose of taking evidence on oath. Rule 232 of the Motor Vehicles Rules only deals with Order 5 which relates to issue of summons, Order 9 which relates to ex-parte proceedings, Order 13 which relates to production and impounding of documents and Order 16 relating to summoning and attendance of witnesses, Order 17 which relates to adjournment of cases, Order 21 which relates to execution and Order 23 which relates to compromise and withdrawal of the proceedings. These provisions do not specifically deal with taking of evidence on oath. Taking of evidence is governed by Sub-section (2) of Section 169 of the Act. Taking of evidence includes the issuance of a Commission for recording the evidence. The Commissioner who had been appointed under Order 26 of the CPC acts as an officer of the Court for the purpose for recording the evidence. Therefore, by making a rule even the State Government cannot exclude the provisions of Order 26 which enables the Court to appoint a Commission for recording the evidence. Since, according to Sub-section (2) of Section 169, a Tribunal shall have all the powers of a civil court for the purpose of recording the evidence. That power also includes the power of issuing a Commission for recording the evidence. If it is held that the Court has no power to issue a Commission, it may lead to disastrous consequences. Suppose an injured who is completely bed-ridden and unable to move about and is staying at a place far away from the Court, can it be said that he cannot be examined on Commission when his presence in the Court cannot be procured because of his inability to come to the court. Such a situation is not expected. The rules or procedure are intended to advance and in furtherance of the cause of justice. Therefore, it cannot be said that the Court has no power under Rule 232 to issue a Commission and the provisions of Order 26 C.P.C. are excluded by implication since the same has not been mentioned in Rule 232.

2. Accordingly, I allow the revision petition and directed the Motor Accidents Claims Tribunal, Jalandhar, to issue commission to examine the Regional Transport Authority, Cuttack. It is made clear that the expenses for the Commission shall be borne by the Insurance Company irrespective of the result of the claim petition.