

(1988) 08 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1103 of 1980

Ramji Dass Dhingra

APPELLANT

Vs

Harbhajan Singh and others

RESPONDENT

Date of Decision: Aug. 10, 1988

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: Jai Singh Sekhon, J

Bench: Single Bench

Advocate: Sabina, for the Appellant; G.S. Punia with Mr. B.S. Wasu, for the Respondent

Judgement

J.S. Sekhon, J.

This civil revision is directed under Article 227 of the Constitution of India by the owner of the truck against the order dated 17th March, 1980, passed by the Motor Accidents Tribunal, Ludhiana, dismissing his application for setting aside the ex parte award dated 25th May, 1979.

2. In brief, the facts are that on 28th July, 1976, Harbhajan Singh injured, received injuries in an accident with truck bearing registration No. PNT-8899 belonging to the present petitioner. He then filed claim petition u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter called the Act) for compensation against the driver/owner and the insurer of the truck. Ramji Dass, petitioner, failed to appear before the Tribunal despite service through publication in the news-paper "Tarjman," a local daily of Ludhiana, which resulted in ex parte proceedings against him. Ultimately, the ex parte award was given by the Tribunal on 25th May, 1979, for compensation of Rs. 10,037.45 Paise. The petitioner filed application on 16th July, 1979 for setting aside the ex parte award contending that he was not validly served and learnt about the award when Harbhajan Singh injured contacted him in connection with the attachment of his truck during the execution of the ex parte award. This application was resisted by Harbhajan Singh respondent contending that the petitioner was properly served in that award and there were sufficient grounds for setting aside

the ex parte award?

3. The learned Tribunal after appraising the evidence led by both the parties found that the application was barred by time and there was no sufficient ground for setting aside the ex parte award as the applicant was duly served.

4. I have heard Mrs. Sabina, learned counsel for the petitioner and Mr. G.S. Punia, learned counsel for the respondents. The perusal of the impugned order of the record reveals that initially Ramji Dass, petitioner, was proceeded ex parte on 8th June, 1978, but during the course of recording evidence thereafter it came to the notice of the Tribunal that full particulars of the respondent were not given by Harbhajan Singh injured in his claim petition and he was directed to furnish the same for effecting service on the respondent afresh after furnishing of full particulars. The respondents were ordered to be served through proclamation in the daily Hind Samachar, vide order dated 9th August, 1978. Thereafter on 30th March, 1979, this order was modified to the effect that the publication be made in Tarjman. The service was got effected through proclamation in Tarjman, a local newspaper of Ludhiana Ramji Dass, petitioner, failed to turn up on 16th April, 1979 despite his substituted service, which resulted in taking ex parte proceedings against him, and ultimately the giving of said ex parte award.

5. No doubt, the Tribunal had resorted to service of the respondents, including the present petitioner through ordinary process initially, but ultimately they were got served through substituted service by publication of notice in the Daily Hind Samachar of Jalandhar and thereafter on his failure to appear before the Tribunal, ex parte order dated 8th June, 1978 was passed. Later on, when it came to the notice of the Tribunal that full particulars of the respondents were not given, it had again ordered on 9th August, 1978 that the respondents be got served through proclamation of notice in the daily Hind Samachar. Thus, under these circumstances, it was incumbent upon the Tribunal to have exhausted all the avenues of the service of the respondents through ordinary process before resorting to substituted service. The approach of the Tribunal in resorting to substituted service straightaway by publication and that too in a local paper of Ludhiana is not legally valid, especially when the petitioner resided in village Bharo of Tahsil Gidderbaha. It can be well presumed that "Tarjman" local newspaper of Ludhiana had no circulation at Gidderbaha. There is no evidence on the file that a copy of this newspaper was sent on the given address of Ramji Dass, petitioner. Under these circumstances, the findings of the Tribunal regarding the validity of service are not sustainable.

6. The other findings of the Tribunal regarding the application for setting aside the ex parte order being barred by time are also erroneous, as the ex parte award was given on 25th May, 1979 and the petitioner was required to file application within 30 days of that order i.e. by 24th June, 1979, when the Civil Courts were certainly closed due to annual vacation. Judicial Courts opened on 16th July, 1979, when this

application was filed. Thus, it can be well inferred that the petitioner believed in good faith that such application was not required to be filed during the vacation. Under these circumstances, there are sufficient grounds for condoning the delay in filing the application.

7. For the foregoing reasons, the impugned order of the Tribunal as well as ex parte award are hereby set aside by accepting this revision petition and the claim petition is ordered to be restored against its original number. The Tribunal shall allow the petitioner to file written statement and proceed with the claim petition in accordance with law. The parties through their learned counsel are directed to appear before the District Judge, Ludhiana, on 8th September, 1988. The District Judge shall dispose of this matter himself or entrust the same to the Court of S. Gian Inder Singh, Motor Accident Claims Tribunal. There is, However, no order as to costs in the peculiar circumstances of the case.