

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

CIMA No.244/2010 c/w CIMA 281/2010, CIMA 282/2010, CIMA 285/2010, CIMA 286/2010, CIMA 283/2010, CIMA 284/2010, CIMA 290/2010, CIMA 327/2010, APCIV 129/2010, APCIV D-130/2010, APCIV D-133/2010, APCIV 137/2010, CMA Nos.484/2010, 479/2010, 482/2010, 483/2010 & 149/2010

Date of Order: 19.09.2013

Shakuntala	Vs.	Sohan Singh and ors.
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Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing Counsel:

For the Appellant(s) : Mr. Jatinder Choudhary, Advocate.
For the Respondent(s): Mr. D.S.Chouhan, Advocate.

APCIV 129/2010, APCIV D-130/2010,
APCIV D-133/2010, APCIV 137/2010

Heard.

For the reasons stated in these applications, same are allowed and disposed of.

CMA Nos.484/2010, 479/2010,
482/2010, 483/2010 & 149/2010

Heard. Considered.

On going through these condonation of delay applications, I am satisfied that delay caused in filing the main appeals is sufficiently explained. Accordingly, all the applications seeking condonation of delay are allowed and disposed of.

Main appeals are taken on board.

CIMA Nos. 244/2010 c/w 281/2010,
282/2010, 285/2010, 286/2010, 283/
2010, 284/2010, 290/2010, 327/2010

As suggested by appearing Id. counsel for the parties, these appeals are taken up for final consideration and are being disposed of by a common order.

Heard. Considered.

I have perused the record.

Nine claim petitions in File Nos. 208 to 216 were taken up for inquiry by the Id. Motor Accident Claims Tribunal, Jammu (for short the Tribunal) as all of them, were arising out of the same motor accident having occurred on 16-2-2009 near Kalu Chack, NH, Jammu. Issues were framed on 6-2-2009 and petitioners were asked to enter evidence.

Minutes recorded by the Id. Tribunal, would show that after allowing few adjournments for producing evidence, the Id. Tribunal vide order passed on 26-10-2009 allowed last and final opportunity in this regard and listed the case for 20-11-2009. As evidence was not produced on 20-11-2009, the Id. Tribunal closed petitioners' evidence and dismissed all the petitions for petitioners' failure to lead evidence. Relevant portion of the order passed on 21-11-2009 reads:

"The scanning of the file reveals that neither any witness of the petitioners nor the petitioners as their own witnesses appeared in the case. Accordingly, all

the petitions fail for lack of evidence. Accordingly, all the petitions are, hereby, dismissed and are consigned to records”.

Petitioners moved application before the Id. Tribunal for recalling the order dated 20-11-2009. The Id. Tribunal dismissed this application holding that there was no scope for restoration of the claims or recalling of the order because they have been decided on merits for lack of production of evidence in respect of their petitions.

Petitioners have challenged both the orders dated 20-11-2009 and 26-02-2010.

The preliminary question arising for consideration is as to whether order dated 20-11-2009, whereby claim petitions have been dismissed for petitioners’ failure to lead evidence is legally correct.

Mr. Jatinder Choudhary, Id. counsel for petitioners would say that dismissal of the petitions on merit is not legally sustainable because due to absence of the petitioners on that day, the Id. Tribunal should at the most have dismissed the petitions in default of appearance. In this regard, he has referred to Order-17, Rule-3 CPC.

Mr. D.S.Chouhan, Id. counsel appearing for respondent/Insurance Company, however, supported the impugned order.

A combined reading of both the impugned orders would show, which is rather admitted case of both the sides that the petitioners neither were present nor they were represented by their counsel on 20-11-2009. This is evident from the order passed on that day and clear than evident from the order passed on 26-11-2010. Presence of neither of the parties or their counsel has not been recorded in the order passed on 20-11-2009 and the order passed on 26-02-2010 would show that the Id. Tribunal had found while disposing of the application for recalling the order dated 20-11-2009 that the parties, witnesses or their counsel were not present on 26-02-2010.

The question, thus, arising is what course the Id. Tribunal should have adopted in absence of the petitioners or their counsel in backdrop of their failure to have produced any evidence on 20-11-2009.

Rule-3 of Order 17 CPC reads :-

“Court may proceed notwithstanding either party fails to produce evidence, etc:- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default:

(a) If the parties are present, proceed to decide the suit forthwith; or

(b) If the parties are, or any of them is, absent, proceed under rule 2.”

The legal position is clear to admitting of no doubt. If a party to the suit to whom time has been granted fails to produce his evidence, the Court (Tribunal) can proceed to decide the suit forthwith. However, if the party to whom time has been so granted is absent, the Court has to fall back to Rule-2. Under R-2 Order 17, the Court may in its discretion proceed to dispose of the suit in one of the mode directed in that behalf by Order-9 or make such order as it thinks fit. The Court may, therefore, either adjourn the suit awaiting the parties or dismiss the suit if absence is of the plaintiff and proceed ex-parte if absence is that of the defendant. In absence of parties, the Court has no power to pass order in terms of O-17, Rule 13 (A).

Faced with the absence of petitioners in the backdrop of their failure to have led any evidence, the Id. Tribunal either could have adjourned the case awaiting petitioners' appearance or best could have dismissed the petitions in default. Passing order, therefore, dismissing the petitions for lack of evidence, was legally incorrect and is not tenable.

For whatever has been said above, the impugned order dated 20-11-2009 is set aside and consequently

order dated 26-02-2010 becomes nonest with a direction to the Id. Tribunal to proceed afresh.

Record of the Id. Tribunal whatever be remitted back alongwith a copy of this order where both the sides shall cause their appearance on 21st Oct. 2013.

Disposed of, accordingly.

Let a copy of this order be placed in each of the file.

(Janak Raj Kotwal)

Judge

Jammu

19.09.2013

"Ved-Secretary"

