

Satendra Kumar Singh Vs. Devendra Pal Singh

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Court : Jharkhand

Decided On : Aug-06-2004

Reported in : 2006ACJ2063; [2004(4)JCR402(Jhr)]

Judge : Narendra Nath Tiwari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13 - Order 43, Rule 1; Bihar Motor Vehicles Rules, 1961 - Rule 20

Appeal No. : M.A. No. 391 of 2003

Appellant : Satendra Kumar Singh

Respondent : Devendra Pal Singh

Advocate for Def. : A.K. Lall, Adv.

Advocate for Pet/Ap. : Sachidanand Lal and; Rajiv Anand, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Narendra Nath Tiwari, J.

1. Heard the parties at length. With the consent of the counsel for the parties, this Misc. Appeal is being disposed of finally.

2. Mr. Rajiv Anand, learned counsel appearing on behalf of the appellant and Mr. A.K. Lall, learned counsel appearing on behalf of the sole respondent made their submissions on merit of the appeal.

3. This appeal against the order dated 13.9.2003 passed by the 7th Additional District and Sessions Judge. Palamau at Daltonganj in Misc. Case No. 4/2002 (arising out of M.V. Case No. 16/1992). By the said impugned order the petition under Order IX, Rule 13, CPC filed by the appellant has been dismissed.

4. The case of the appellant is that the respondent filed an application under Sections 140 and 166 of the Motor Vehicle Act, 1988 praying for grant of compensation on account of the injury sustained by him on 7.10.1991 in a motor vehicle accident involving Bus No. BR-3 H/5455. The said petition was filed in the Court of District Judge-cum-Motor Vehicle Accident Claims Tribunal, Palamau at Daltonganj and was registered as M.V. Case N6 16/1992. The appellant, was the sole opposite party being the owner of the said Bus No. BR-3 H/5455 and his address was shown: Mirganj, District Aara. According to the appellant he had not received any notice regarding the said case. According to him from the perusal of the order-sheet of the said M.V. Case No. 16/1992 it appeared that the case was adjourned to several dates from 18.11.1992 to 26.8.1993 directing the said claimant-respondent to take steps for service of notice but no step was taken in compliance of the said orders. It further appeared from the margin note of order-sheet dated 25.5.1992 that the postal summons were not issued as A/D was not filed. According to the appellant, no notice was ever issued to him which would be evident from the order-sheet of the said M.V. Case No. 16/1992. But by order dated 23.9.1993, the Tribunal made an observation that neither A/D of the registered notice has been received nor the postal article containing the notice has been returned and on that basis he declared that there was a deemed service of notice and fixed the said case for ex parte hearing. Ultimately, the hearing proceeded and ex parte judgment and award dated 11.9-1997 was passed by which the appellant has been fastened with the liability to pay the awarded compensation amount of Rs. 2,22000/-. According to the appellant for the first time, he came to know about the said award when a registered notice was sent to him on the present address at Dehri-On-Sone Station Road on 26.8.2002. On

receipt of the said notice the appellant rushed to Daltonganj and applied for certified copies of the relevant documents including the award which was delivered to him on 19.9.2002. On obtaining certified copy of the relevant record, he for the first time came to know that there was an ex parte award against him in the said M.V. Case No. 16/1992. Further case is that on 30.9.2002 he filed an application under Order IX. Rule 13, CPC for setting aside the said ex parte judgment and award within 30 days from the date of his knowledge which was registered as Misc. Case No. 4/2002. In the said case claimant-respondent appeared and contested the same. After taking evidences and hearing the parties, the 7th Additional District and Sessions Judge-cum-Motor Vehicle Claim Tribunal, Daltonganj held that the appellant had knowledge about the claim case and that Misc. case was not maintainable. He thus dismissed the Misc. case by order dated 30.9.2003 which has been challenged in this appeal.

5. Due to some confusion in certified copy of the impugned order the Lower Court Record was called for which has been received. Notice was earlier issued to the respondent and responding to the same, he has appeared through his counsel Mr. A.k. Lall, Since the parties have appeared and the Lower Court Record has been received, both the parties agreed for final disposal of this appeal at this stage itself,

6. Mr. Rajiv Anand in support of the appeal submitted that the impugned order is wholly illegal and unsustainable as the same has been passed ignoring the materials and evidences on record as well as the provision of law. According to the learned counsel it is evident from the order-sheet of said M.V. Case No. 16/1992 that on 3.4.1992 claimant-respondents had filed the application under Sections 140 and 166 of the Motor Vehicle Act, claiming compensation against the respondent who was the sole opposite party and by order dated 27.4.1992 the case was admitted and the order issuing notice to the opposite party was passed. Thereafter the case was protracting awaiting the service report and after lapse of a long time spread over about more than a year, the Tribunal by his order dated 23.9.1993 suddenly declared deemed service of notice on the basis of non-receipt of either A.D. or the postal article. According to the learned counsel, it is evident from the order-sheet that notice was never sent by registered post with A/D and

thus there was no question of return of either the A/D or the postal article. Learned counsel further pointed out to a note made in the margin of the order dated 25.5.1992 in which it has been clearly mentioned that the postal summons not issued as A/D is not filed. According to the learned counsel, the Tribunal without taking into consideration the said order-sheet and without any application of mind erroneously declared deemed service of notice and on that basis fixed the case for ex parte hearing which was finally disposed of ex parte by passing an award against the appellant holding him liable to pay a sum of Rs. 2.22000/-. According to the learned counsel while dismissing the Misc. case and passing the impugned order, the Tribunal did not take into consideration of the said materials on record and recorded an erroneous finding that the appellant had full knowledge about the claim case and that the Misc case was not maintainable. According to him, the learned Tribunal dismissed the said Misc. case only in assumption/presumption. without any legal basis and thus the impugned order is wholly perverse and liable to be set aside,

7. Mr. A.K, Lall, learned counsel appearing on behalf of respondent has seriously .contested the appeal. Mr. Lall contended that the appeal itself is not maintainable as against order dismissing the case under Order IX, Rule 13, CPC as the Motor Vehicle Act does not provide for such appeal. Mr. Lall relied upon a decision reported in 1998(2) TAG 1 (Mad.) and submitted that as the application under Order IX. Rule 13, CPC was itself barred by limitation and no petition for condonation of delay having been filed along with the said application, no appeal is maintainable against such dismissal order which according to him, has been held in the said Madras decision. Mr. Lall further contended that even otherwise there is no infirmity and illegality in the impugned order inasmuch as the same is based on evidences on record and is in accordance with law. According to Mr. Lall although there is no mention of exact date of issuance of notice in the order-sheet of M.V. Case No. 16/1992. Yet the order dated 23.9.1993 being the judicial order declaring valid service, same cannot be lightly ignored. Mr. Lall submitted that observation of the Tribunal that the notice was sent through registered post on 25.5.1992 and neither A/D nor the postal article containing the said notice returned, should be believed and acceptance of service of notice on that ground should be upheld. And in that view there is no illegality in the order-

8. I have beared counsel for the parties and perused the record. From the record of M.V. Case No. 16/1992, I find that from the date of filing of the application till date of declaration of deemed service by order dated 23.9.1993 there is no mention in the order-sheet that the notice was sent to the respondent by registered post vide order dated 23.9.1993. It has been observed that the notice was sent by registered post with A/D on 25.5.1992. I find that there is no such order-sheet dated 25.5.1992 on the record and there is no mention of issuance of notice by registered post any where in the order-sheet of the said M V Case by the Tribunal. The observation made in the order-sheet dated 23.9.1993 of the learned Tribunal seems to be unfounded and the same is perverse. Even thereafter, there is nothing on the record to show that the notice of the said case was ever served to the appellant.

9. In such circumstances, there is no reason to disbelieve that the appellant came to know about the case award only on receipt of the certified copy of the record of the said case which was taken out when the appellant was served with notice of Execution case No. 1/2000.

10. In disposing of the Misc. Case No. 4/2002 filed under Order IX, Rule 13, CPC. Learned Tribunal did not apply its mind on the said materials on record and the Misc. I case has been erroneously dismissed. So far the objection of maintainability of the appeal raised by Mr. Lall is concerned, that is also devoid of any substance. Rule 20 of the Bihar Motor Vehicle Rules, 1961, clearly provides that the first schedule of the Code of Civil Procedure including that of Order IX, shall apply to the proceedings before the Claims Tribunal Order XLIII, Rule 1 (d) of the, CPC provides for an appeal against the order rejecting the application filed under Order IX, Rule 13, CPC. I thus see no impediment in maintainability of this appeal. The decision reported in 1998 (2) TAC 1 (Mad) (supra) was rendered in different circumstances and is of no help to Mr. Lall in this case the appellant came to know about the ex parte award on receipt of certified copy of the record on 19.9.2002 and the Misc case was filed on 30.9.2002. Article 123 of the Limitation Act, 1963 prescribes 30 days period of limitation for filing an application to set aside an ex parte decree from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree. The

said Misc. Case No. 4/2002 having been filed within 30 days of knowledge of the ex parte award was well within time and no application for condonation of delay was required.

11. The impugned order of the learned Tribunal is thus wholly illegal, perverse and unsustainable. The same is hereby set aside. The appeal is allowed. The Misc case No. 4/2002 is remitted to the Tribunal for fresh hearing and disposal, in accordance with law. Keeping in view the nature of the matter, the learned Tribunal will proceed to dispose of the case with rapid expedition preferably within two months from the receipt of this order. Let the relevant records of the case be immediately transmitted to the Tribunal concerned.

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