

**United India Insurance Co. Ltd. Vs. Seno and ors.**

**United India Insurance Co. Ltd. Vs. Seno and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/631263](http://sooperkanoon.com/631263)

**Court :** Punjab and Haryana

**Decided On :** Nov-28-1997

**Reported in :** II(1998)ACC64; 1998ACJ536; (1998)118PLR171

**Judge :** Swatanter Kumar, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 26; [Motor Vehicles Act, 1988](#) - Sections 166 and 169

**Appeal No. :** Civil Revision No. 2179 of 1997

**Appellant :** United India Insurance Co. Ltd.

**Respondent :** Seno and ors.

**Advocate for Def. :** Harbhajan Singh, Adv.

**Advocate for Pet/Ap. :** V.K. Kapoor, Adv.

**Disposition :** Petition allowed

**Judgement :**

Swatanter Kumar, J.

1. Scope and the limitations of applicability of procedural law (Order 26 of Code of Civil Procedure) to the entertainment and decision of the claim petition before the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act, is the basic question that falls for determination in this case. In order to have synoptic analysis to this question, it may be appropriate to refer to the basic provisions which are applicable in such situation. To provide an apt approach in this regard reference to the necessary facts giving rise to the present petition becomes necessary;-

2. Smt. Seno and another filed a petition Under Section 166 of the [Motor Vehicles Act, 1988](#), hereinafter referred to as the Act. It is the case of petitioner Smt. Seno that Gurdev Singh, her husband, died on 7.12.1992 in motor vehicular accident involving respondent No.1. The vehicle was insured to respondent No.2-United India Insurance Co. Ltd. As per allegations, the accident occurred due to rash and negligent driving of respondent No.1 and thus, the petitioners prayed for payment of compensation claimed in the petition.

3. The respondents contested this case and one of the pleas raised was that respondent No.1, driver of the vehicle, did not have proper and valid licence. Evidence led by the parties was recorded. When the case was fixed for rebuttal evidence of the claimants, the Insurance Company moved two applications; one for permission to lead additional evidence while the other for examination of the witness on open commission. The application for permission to lead additional evidence was allowed while the other application for examination of the witness on open commission was declined vide order dated 28.4.1997. It is this order of the learned Tribunal dated 28.4.1997 which has been impugned in this revision petition.

4. The only ground on which the application for examination of the witness on open commission was declined by the learned Tribunal is that the provisions of Order 26 of the Code of the Civil Procedure are not applicable to the tribunal. It is this view of the Tribunal against which the petitioner is aggrieved, though the other application in regard to additional evidence based on the same has been allowed.

5. It needs to be noticed at this stage that the learned counsel appearing for respondent No.1 before the learned Tribunal while closing the evidence on 4.3.1997 has tendered in evidence copy of the driving license and the case was consequently fixed for rebuttal evidence of the petitioners. The Insurance Company filed an application for additional evidence to prove their plea that no valid and proper driving license was issued by the District Transport Officer, Fatehgarh Sahib and also intended to examine the Licensing Authority, Hyderabad on commission as the driving license in question was initially issued by the Licensing Authority, Hyderabad, though it was renewed by the District Transport Authority, Fatehgarh Sahib.

6. In holding an enquiry Under Section 168 of the Act on an application filed Under Section 166 of the Act the Tribunal is free to adopt such course and procedure as it thinks fit. Such procedure, of course, has to be subject to the rules, if any, framed by the State in this behalf. Claim Tribunal shall be deemed to be Civil Court for all purposes as per Section 169 of the Act. Section 169 of the Act is relevant provision which describes the powers and procedure of the claim Tribunal and is reproduced as under:-

'169. Procedure and powers of Claims Tribunals - (1) In holding any inquiry Under Section 168, the Claim Tribunal may subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) 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 and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1994).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the, inquiry to assist it in holding inquiry.'

7. Under Section 176 of the Act, the State Government has been empowered to frame rules for the purpose of carrying into effect the provisions of Sections 165 to 174 of the Act. Under Sub-clause (b) and (c) of Section 176, the State Government can frame the rules in regard to the procedure to be followed by the Claims Tribunal in holding the inquiry in this Chapter and also what powers vested in the Civil Court may be exercised by a Claims Tribunal.

8. The Central Motor Vehicles Rules, 1989 as amended are totally silent in regard to the powers and procedure to be adopted by the Claims Tribunal. The Government of Punjab vide notification dated 14.9.1964 in exercise of the powers vested in it Under Section 176 of the Act had framed the Punjab Motor Accidents Claims Tribunal Rules, 1964, hereinafter referred to as the Tribunal Rules. The rules so framed place an obligation upon the Tribunal to even frame issues for just and fair decision of the case. Thereafter evidence has to be recorded. Finally while giving judgment and award of compensation, the Tribunal is to pass finding on each issue. Rules 8 and 20 of the Tribunal Rules are the relevant rules which give range of powers exercisable by the Tribunal in adjudicating the petition for compensation. Rules 8 and 20 of the Tribunal Rules read as under:-

'8. 'Sections 110-C and 111A(b)'. Summoning of witnesses - if any application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved; if any, issue summons for the appearance of such witness, unless, it considers that their appearance is not necessary for a just decision of the case.'

'20. 'Section 110-C. Code of Civil Procedure to apply in certain cases - The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall be far as may be apply to proceedings before the Claims Tribunals, namely, Order V. Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; (Order XXI) and Order XXIII, Rules 1 to 3.'

9. The bare reading of the above provisions sufficiently indicates that wide powers are vested in the Tribunal for summoning and examination of the witnesses and for conclusion of its proceedings. While Rule 20 declares that some of the provisions contained in the First Schedule of the Code of Civil Procedure, 1908, shall apply to the proceedings before the Tribunal, Rule 8 imposes a specific obligation upon the Tribunal to summon a witness unless and until the Tribunal is of the view that the appearance of the witness is not necessary for just decision of the case. As per provisions of Section 121 of the Civil Procedure Code, all the orders and rules in the First Schedule of the Code shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of the Code. The provisions of Rules 2 to 21 of Order 16 of the Code of Civil Procedure have been made specifically applicable to the proceedings before the Tribunal. These are the relevant provisions for determination of the controversy in the present case. Under the relevant provisions contained under Order 16 of the Code and Rule 8 of the Tribunal Rules, the Tribunal is to summon a witness for examination if prayed by a party unless the Tribunal finds that the witness is not necessary for proper adjudication. But once the Tribunal decides in favour of the applicant that the examination of the witness is proper and necessary for fair adjudication of the petition, it becomes obligatory upon the Tribunal to summon such a witness and ensure his examination in accordance with Rules. An applicant can never be faulted if he acts in accordance with the order of the Court, but the witness summoned gets protection under the provisions of the Code itself not to appear. If the situation so arises, the Tribunal has to make provision for appropriate order which would meet the ends of justice, while in conformity with the statutory provisions. Rule 19 of the Order 16 of the Code provides protection to a witness sought to be produced before the Court for giving evidence. If he is not residing within the local limits of the Court's ordinary original jurisdiction or lives beyond 500 km from the Court house, protection provided is that such a witness cannot be forced to appear before the Court unless and until he is provided air fare in accordance with the provisions of the said Rule. Thus, this provision is an implied bar to the summoning of the witness before the Court. The obvious result of this specific bar provided under the Rule which is applicable to the proceeding before the Rule which is applicable to the proceeding before the Tribunal, is that either the witness should be furnished air fare or in the interest of justice he ought to be examined on commission where the facts and circumstances of the case permit. The rejection of the application on the ground that the provisions of Order 26 of the Code are not applicable, does not appear to be sustainable in law.

10. The Tribunal has been vested with wide powers to evolve the procedure of its own which is in consonance with the rules and must be in adherence to the basic rules framed and the principles of natural justice. All procedural laws are intended to achieve the ends of justice and to make fair adjudication between the parties. As per well accepted principles of law, procedural law must be interpreted liberally to achieve the object of the Act and no procedure should be framed to operate so as to result in throttling of basic principles of civil jurisprudence. Discretion vested in the Tribunal exercised in consonance with the specific provisions or Rules and guided by general principles incorporated in the Civil Procedure Code cannot be said to offend any law. More so, when the Act or Tribunal Rules do not provide for any prohibition for adoption of general principles. Application of certain specific provisions of the Code does not impliedly prohibit or debar the Tribunal from being guided by General principles provided under the Civil Procedure Code.

11. In the present case, with regard to the relevancy of the witness to the proceedings before the Tribunal, the following findings of the learned Tribunal as recorded in the impugned order are relevant and are reproduced as under: -

'When such are the circumstances the interest of justice requires that the Insurance Company may be given adequate opportunity to prove as to whether the licence, copy of which has been placed on the record, by respondent No.1 is genuine or not. It is however subject to the condition that the applicant shall be

responsible for the service of the witness at its own responsibility and subject to payment of Rs. 400/- as costs.'

12. The above findings clearly show that the learned Tribunal in its wisdom considered that the examination of this witness was relevant and necessary. For this reason the Tribunal permitted the Insurance Company to lead additional evidence. Once this relevancy was found, the other application could hardly be rejected by the Tribunal for the reason that the provisions of order 26 of the Code were not applicable. The order to some extent seems to be creating self contradiction for production and examination of the witness. May be, the learned Tribunal could take recourse to the provisions of Rule 19 of Order 16 rather than rejecting this application. The provisions of the Act and the Rules framed thereunder must be harmoniously construed with the provisions of the Code. The compatibility of procedural law is the basic concept leading to proper determination of the cases before the Tribunal. Creation of contradiction not intended by the Legislature is neither permissible nor reasonable. I find that two laws can always run parallel for achieving the object of proper and fair determination of the controversy and come to the aid of each other. General provisions of the Code can always constitute valid guidelines for appropriate procedure to be adopted and the powers to be exercised by the Tribunal under the Act as it is the Civil Court for the purposes and intents specified in Section 169 of the Act and the rules framed thereunder. Under Section 169 the Tribunal has to act as Civil Court for the purpose of taking evidence on oath and of enforcing attendance of the witness and of compelling discovery and production of documents etc. Thus, with regard to forcing the attendance of the witness, the tribunal is Civil Court and would obviously exercise powers available under the Code and subject to the provisions of Rules 8 and 20 of the Tribunal Rules. The limitations specified under Rule 19 of the Order 16 of the Code would be per se applicable. I am of the considered view that the reason given by the learned Tribunal is not tenable in law and more particularly with regard to the facts and circumstances of the present case. At this stage, it may be appropriate to refer to the judgment of Division Bench of Calcutta High Court in the case of *The Calcutta State Transport Corporation v. Lakshmi Rani Pal and Ors.*, A.I.R. 1977 Calcutta 249 where the Court held that applicability of provisions of Order 18 of the Code though was excluded, but an order in consonance with the principles of natural justice and fair play while adopting its own procedure directing the re-examination of a witness could not be said to have been vitiated. The following observations of the Bench are relevant and reproduced as under :-

'It may also be reproduced that the entirety of Order 18 of the CPC has been excluded in such trial by the Rules framed by this State under the Motor Vehicles Act, 1939. In absence of restraint, the Tribunal is entitled to follow its own procedure for ends of justice in the context of circumstances of a case. Such procedure however will have to be consistent with the principles of fair play and natural justice and should not cause any prejudice to any party.'

13. The Division bench of this Court in the case of *New India Assurance Co. Ltd. v. Punjab Roadways, Ambala City*, A.I.R. 1964 Punjab 235 observed as under :-

'In the absence of a restraining provision a tribunal is at liberty to follow any procedure that it may choose to evolve of itself so long as the said procedure is orderly and consistent with the rules of natural justice and does not contravene the positive provisions of the law. Section 110-B expressly confers powers on the Tribunal to formulate its own procedure, and for the purpose of promoting the ends of justice it could well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments or substitution so as to rectify a mistake or to bring on record parties which were necessary or proper. In this view of the matter, the Tribunal acting Under Section 110-B can properly allow substitution in accordance with the principles embodied in Order 1 Rule 10 of the Civil Procedure Code.'

14. In the case of *Smt. Kamala Dewa v. Sasadhar Behera and Anr.*, A.I.R. 1987 Orissa 257 it was held that the provisions of Order 26 of the Code are applicable to the proceedings before Claims Tribunal. Relying upon the Division bench judgment of Madras High Court in the case of *P. Shanmugham and Ors. v. Madras Motor and General Insurance Co. Ltd. And Ors.*, A.I.R. 1974 Madras 363, the Court held as under :-

'But the question still remains to be considered is as to whether the Tribunal is incompetent to examine a claimant on commission who has been found to be bedridden and is not in a position to come and depose merely because Order 26 of the Civil P.C. had not been made applicable to a proceeding before the Tribunal under Rule 20. In my opinion, the answer to this question must be in the negative, that it to say, it must be held that, the Tribunal in an appropriate case, has the power to examine the claimant on commission if it is otherwise satisfied about the claimant's incapacity to appear before it and depose since that is the only way possible for it to get the statement of the claimant, which is absolutely necessary in the interest of justice. The broad reasons for my aforesaid conclusion are firstly, there is no prohibition in the rules disentitling a tribunal to examine a person on commission, secondly, the statute itself, namely, Section 110-C enables a tribunal to follow such procedure as it thinks fit, and such procedure in my view would be a procedure which is required to hold an enquiry into the claims for the purpose of making an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. The word 'enquiry' cast come sort of obligation on the tribunal to find out whether the claimant is entitled to receive compensation and if so the quantum of compensation. In course of such enquiry if the tribunal finds that the claimant is incapacitated to appear before it and give his evidence and if Jus evidence is absolutely necessary for determining his entitlement as well as the quantum of compensation, then the tribunal is entitled to examine the claimant on commission so as to discharge his responsibilities and obligations under the statute and to do justice between the parties and for effective adjudication.'

15. Learned counsel appearing for the respondents relied upon the judgment for Allahabad High Court in the case of Sardar Singh v. U.P. State Road Transport Corporation, 1992 A.C.J. 463 where some observations were made by the learned Judge that the provisions of Order 26 of the Code are not applicable to proceedings before the Claims Tribunal and the power to issue commission for examination of witnesses cannot be exercised by the tribunal. In view of the above reasoning given by me and various judgments referred (supra) and more particularly the observations of the Division Bench of this Court, respectfully I am not in a position to reconcile myself to the view expressed by the learned Single Judge in the case of Sardar Singh (supra).

16. Learned counsel appearing for the respondents submitted that examination of such a witness is totally irrelevant in the facts and circumstances of this case. On the other hand the learned counsel for the petitioner while contending to the contrary submitted that the respondents cannot be permitted to urge this point as no revision has been preferred by the respondents herein against the order dated 28.4.1997 is so far as it allowed the application of the Insurance Company for permission to adduce additional evidence. Learned counsel for the parties relied upon the judgment of Full Bench of this Court in the case of National Insurance Co. Ltd. v. Smt. Santro Devi and Ors., (1996-3)114 P.L.R. 667. In view of the observations of the Full Bench I find no occasion to discuss this point in any further elucidation. Suffice it to say that the question, whether the driver had a valid or forged driving licence or whether such licence was renewed by the competent authority has to be determined upon proper evidence by the learned Tribunal during the course of trial. The obligation of the Insurance Company certainly depends upon this plea in terms of the accident and liability both.

17. For the reasons aforesaid, this revision petition is allowed and the order dated 28.4.1997 in so far as it dismissed the application of the Insurance Company under Order 26 of the Code is hereby set aside. However, it is directed that Insurance Company shall be obliged to summon this witness before the Tribunal by offering air fare to the said witness for his attendance and examination before the learned Tribunal in accordance with the provisions of Rule 19 of Order 16 of the Civil Procedure Code. If for any reason compliance of this order becomes impossible, the Tribunal Would be at liberty to direct the appointment of open Commission thereafter for examination of such witness.