

Champa Devi and ors. (Smt.) Vs. Dalbhag Singh and ors.

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Court : Rajasthan

Decided On : Mar-04-2004

Reported in : III(2004)ACC124; RLW2004(3)Raj1861; 2004(2)WLC633

Judge : Sunil Kumar Garg, J.

Acts : Rajasthan Motor Vehicle Rule (Rajasthan), 1990 - Rule 10.8

Appeal No. : S.B. Civil Writ Petition No. 2317 of 2002

Appellant : Champa Devi and ors. (Smt.)

Respondent : Dalbhag Singh and ors.

Advocate for Def. : Jagdish Vyas, Adv. for Respondent No. 4

Advocate for Pet/Ap. : Rajesh Panwar, Adv.

Disposition : Petition allowed

Judgement :

Sunil Kumar Garg, J.

1. This writ petition under Articles 226 & 227 of the Constitution of India has been filed by the petitioners against the respondents on 1.7.2002 with the prayer that by an appropriate writ, order or direction, the order dated 22.3.2002 (Annex.1) passed by the respondent No. 5 learned Judge, Motor Accident Claims Tribunal, Pali

(hereinafter referred to as 'the Claims Tribunal') by which the service on respondents No. 1 and 2 by way of substituted service was closed on account of non- furnishing of process fee and notices by the petitioners- claimants, be quashed and set aside.

2. The case of the petitioners as put forward by them in this writ petition is as follows:-

The petitioners-claimants filed a claim petition before the respondent No. 5 claims Tribunal, Pali for compensation on account of death of one Mala Ram in a motor vehicle accident which took place on 8.3.1996. In that claim petition, ex-parte orders were passed against the respondent No. 3 Mohanlal as he did not put-in appearance despite service of notice on him, but for respondents No. 1 and 2 Dalbhag Singh and Sardul Singh respectively, the petitioners-claimants filed PF and notices, but all the times notices were returned unserved. Thereafter, an application was moved by the petitioners-claimants on 5.11.2001 for making substituted service on the respondents No. 1 and 2 and that application was allowed and the case was posted on 18.1.2002, but due to some reasons, notices for publication could not be filed by the petitioners-claimants on that day and the case was posted on 22.3.2002 and on that day, the impugned order Annex.1 dated 22.3.2003 was passed by the learned claims Tribunal. Hence, this writ petition.

The main contention of the learned counsel for the petitioners-claimants is that closer of service on respondents No. 1 and 2 by way of substituted service has resulted in miscarriage of justice and therefore, the impugned order Annex.1 cannot be sustained and liable to be quashed and set aside.

No reply was filed on behalf of the respondent No. 4 New India Assurance Company Ltd. And the respondents No. 1 to 3 have not appeared before this Court despite service of notices on them.

3. I have heard the learned counsel for the petitioners- claimants and the learned counsel for the respondent No. 4 and gone through the materials available on record.

4. In Dhani Ram and Anr. v. Gurdip Singh and Ors. (1), the Madhya Pradesh High Court observed that in claim matters, it is the duty of the Claims Tribunal to ensure and take steps for service of process on non-applicants by claimants.

5. No doubt in the present case, the petitioners-claimants have not filed PF and notices for substituted services on respondents No. 1 and 2, but for that default, it was not in the interest of justice to close the service on respondents No. 1 and 2 by way of substituted service and therefore, the impugned order Annex.1 cannot be sustained and liable to be quashed and set aside.

6. Apart from this, the Court in Allanoor and Ors. v. Dilip Singh and Ors. (2), has observed that claim petition cannot be dismissed merely on the ground that no steps were taken to get the service effected on the owner and driver of the vehicle, meaning thereby in such matters, the Court should take a liberal view and from this point of view also, the impugned order Annex.1 cannot be sustained and liable to be set aside.

7. For the reasons stated above, this writ petition deserves to be allowed and the impugned order Annex.1 dated 22.3.2002 closing the service on respondents No. 1 and 2 by way of substituted service is liable to be quashed and set aside.

Accordingly, this writ petition filed by the petitioners is allowed and the impugned order Annex.1 dated 22.3.2002 passed by the learned Judge, Motor Accident Claims Tribunal, Pali (respondent No. 5) is quashed and set aside and the respondent No. 5 Claims Tribunal is directed to give one more chance to the petitioners to get the service effected on the respondents No. 1 and 2 by way of substituted service. The Claims Tribunal should also ensure such service on the respondents No. 1 and 2 as the Claims Tribunal has ample power to make service on non- petitioners.