

HIGH COURT OF PUNJAB AND HARYANA**Bench: HON'BLE MR. JUSTICE KARAMJIT SINGH****Date of Decision: November 21, 2023**

I.

FAO-3077-2010 (O&M)

Tasvir Sharma

....Appellant**VERSUS**

Krishan Kumar and others

....Respondents

II.

FAO-3078-2010 (O&M)

Tasvir Sharma

....Appellant**VERSUS**

Parven and others

....Respondents**Legislation:**

Order 9 Rule 13, Order 5 Rule 15 of the Code of Civil Procedure (CPC)

Subject: Setting aside ex parte composite award under Order 9 Rule 13 CPC.

Headnotes:

Setting aside ex parte composite award – Appellant filed appeals against the order dismissing applications under Order 9 Rule 13 CPC to set aside ex parte award – Appellant claimed summons were never served and proper address not given – Appellant learned of ex parte award later and filed applications – Court considers the sufficiency of cause to set aside the ex parte award. [Para 1-5]

Service of summons – Summons were sent to the appellant's given address, and lastly, to appear on 26.5.2008 – Summons received by appellant's father, but no representation on behalf of the appellant on the fixed date – Appellant proceeded against ex parte – Appellant failed to provide a plausible explanation for non-appearance. [Para 11-13]

Dismissal of appeals – Court finds no reason to disagree with the Tribunal’s findings – Appeals dismissed as devoid of merits. [Para 14]

Referred Cases: None

Representing Advocates:

Mr. J.P.Sharma, Advocate, for the appellant.

Mr. Lalit Garg, Advocate, for respondent No.3.

KARAMJIT

SINGH, J.

This common judgment will dispose of above noted two appeals filed against order dated 5.5.2010 whereby the applications filed by appellant Tasvir Sharma under Order 9 Rule 13 CPC for setting aside *ex parte* composite award dated 21.10.2008 passed by MACT, Bhiwani (in short, “the Tribunal”) in MACT Petition No.82 of 2006 and 83 of 2006, have been dismissed.

2. Brief facts of the case are that Krishan Kumar who sustained injuries in a motor vehicle accident which took place on 24.2.2006 filed MACT No.82 of 2006 against Sunil (driver), Tasvir Sharma (owner) and insurer of offending vehicle No.HR-46B-4612. In the similar manner, another injured namely Parven filed separate claim petition being MACT No.83 of 2006. In both claim petitions, appellant-Tasvir Sharma (Owner) and Sunil (driver) of the offending vehicle were proceeded against *ex parte*.
3. The claim petitions were contested by the insurance company. The Tribunal vide composite award dated 21.10.2008 allowed both the claim petitions. In the claim petition filed by Krishan Kumar, compensation worth ` 1,05,859/- was granted and in the claim petition filed by Praven, compensation worth ` 83,640/- was granted and both owner and driver were held jointly and severally liable to pay amount of compensation to the aforesaid claimants. However, the insurance company was exonerated. After passing of the aforesaid composite award dated 21.10.2008, appellant Tasvir Sharma filed separate applications under Order 9 Rule 13 CPC for setting aside of *ex parte*

proceedings against him in both the claim petitions. Both the applications were contested by the claimants namely Krishan Kumar and Praven.

4. After hearing both the parties, the Tribunal dismissed both the applications vide separate orders dated 5.5.2010.
5. The appellant being aggrieved by the said orders, have filed both these appeals.
6. I have heard the counsel for the parties.
7. Counsel for the appellant has, *inter alia*, submitted that the summons with regard to both the claim petitions were never served upon the appellant; that proper address of the appellant was not given in the claim petition and as such, neither the appellant nor any other member of his family ever received summons of the claim petitions. It has been further contended that the appellant was having no knowledge with regard to passing of *ex parte* award dated 21.10.2008 and he came to know about the same for the first time on 10.7.2009 when the process server of the Court concerned served warrants of attachment relating to his truck and immediately thereafter, the appellant filed applications under Order 9 Rule 13 CPC for setting aside of the composite award dated 21.10.2008.
8. Counsel for the appellant, while assailing the impugned orders dated 5.5.2010, has further contended that there is sufficient cause to set aside *ex parte* composite award; that there is nothing available on record to show that the appellant had acted in a negligent manner or that the appellant intentionally failed to appear before the Tribunal during the pendency of the claim petition. So, it has been prayed that the impugned orders be set aside and the appellant be allowed to contest the claim petitions.
9. Both the appeals are resisted by the counsel for the claimants, who while supporting the impugned orders, has *inter alia* contended that the Tribunal time and again sent summons to the appellant and the summons were also sent on the given address of the appellant through registered AD but the said summons were received back unserved with different reports. It has been

further contended that notices which were issued for 26.5.2008 by the Tribunal were served on the father of the appellant; that, however, despite due service of summons through the adult member of the family of the appellant, there was no representation on behalf of the appellant on the date fixed before the Tribunal; that resultantly, the appellant was rightly proceeded against *ex parte* in both the claim petitions. Counsel for the claimants has further contended that no sufficient ground is made out to set aside the *ex parte* composite award dated 21.10.2008 and that the Tribunal rightly dismissed the applications filed by the appellant under Order 9 Rule 13 CPC.

10. I have considered the submissions made by the counsel for the parties.

11. From the perusal of the impugned orders coupled with Annexures A-2 to A-5, it is evident that summons were sent to the appellant at his given address by MACT, Bhiwani in both the claim petitions and lastly, summons were sent by the Court concerned to the appellant for 26.5.2008. The said summons were received by the father of the appellant on 23.5.2008. However, on the date fixed i.e. 26.5.2008, no one appeared on behalf of the appellant before the Tribunal concerned despite his due service through adult member of his family i.e. his father. So, it is evident that the appellant was duly served through his father and it is to be considered as proper service of the appellant as per provisions of Order 5 Rule 15 CPC. There is no doubt that on the date fixed i.e. 26.5.2008, there was no representation on behalf of the appellant despite his due service and accordingly, he was proceeded against *ex parte* by the Tribunal concerned vide order dated 26.5.2008. Even after 26.5.2008, during the pendency of the claim petitions which were finally decided on 21.10.2008, no application was ever moved by the appellant to set aside the aforesaid *ex parte* proceedings. Further even after passing of the composite *ex parte* award dated 21.10.2008, the concerned applications under Order 9 Rule 13 CPC were filed by the appellant in August, 2009.

12. Order 9 Rule 13 CPC envisages two particular conditions, either of which if fulfilled, warrants an interference by the Court to set aside an *ex parte* award or decree. These conditions are :
- (a) Either the defendant satisfies the Court that summons were not duly served upon him or
 - (b) The defendant was prevented by any sufficient cause for appearing when the suit was called on for hearing.
13. In the instant case, it stands fully proved that the appellant was validly served through his father to appear in the Tribunal on 26.5.2008 as per Order 5 Rule 15 CPC. No plausible explanation has been given by the appellant in the applications filed under Order 9 Rule 13 CPC as to why he failed to appear before the Tribunal by the date fixed i.e. 26.5.2008 despite his due service through his father on 23.5.2008. The appellant has also failed to establish that there was sufficient cause/ground which prevented him from appearing in the Tribunal on 26.5.2008 when the claim petitions were called for hearing. It being so, the appellant has failed to prove that there are sufficient grounds to set aside the aforesaid *ex parte* proceedings as well as *ex parte* composite award dated 21.10.2008. So, there is no patent illegality or error in the impugned order passed by the Tribunal.
14. In view of above, this Court does not see any reason to disagree with the findings of the Tribunal. Consequently, both the appeals are hereby dismissed being devoid of merits.

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