

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 134/2005

APPELLANTS

Union of India and another

Versus

RESPONDENTS

Jogendra Singh and another

Single Bench: Hon'ble Shri Goutam Bhaduri, J.

Appearance:-

Smt. Fouzia Mirza, Asst. S.G. for the appellants.

Shri Malay Kumar Bhaduri, Advocate for respondent No.1.

Shri Raj Awasthi, Advocate for respondent No.2.

ORDER
(20.08.2014)

1. This is an appeal filed against the order dated 25.10.2004, passed in M.J.C. No.25/2004, passed by First Additional District Judge, Bilaspur, whereby an application preferred under Order 9 Rule 13 of Civil Procedure Code to set-aside the ex-parte award dated 29.08.2002, passed in claim case No.13/2002, was dismissed.
2. Brief facts which are involved in this case are that a claim petition was preferred by one Jogendra Singh, before the Claims Tribunal on the ground that due to rash and negligent driving of the vehicle bearing No. M.P.-26W-1146 driven by Harihar Ram, the appellant No.2, which dashed the claimant, the claimant had sustained severe injuries. It was also pleaded that the offending vehicle was owned by the appellant. Thereafter, a petition was preferred U/s.166 of the

Motor Vehicle Act, claiming compensation of Rs.1,73,000/- before the Claims Tribunal, Bilaspur.

3. During the course of proceedings, the appellants remained absent before the Claims Tribunal and as such, the Court had proceeded ex-parte against them and eventually an ex-parte award was passed on 29.08.2002. Subsequently, an application under Order 9 Rule 13 of C.P.C. was filed on behalf of appellant to set-aside the such ex-parte award. After hearing, the said application was dismissed by the impugned order dated 25.10.2004, which is under challenged in this appeal.
4. Learned Counsel for the appellants would submit that the rejection of the application on the ground that the provisions of Order 9 Rule 13 of C.P.C. are not applicable is completely against the statutorily provisions in as much as the Motor Vehicle Rules provides the applicability of the Order -9 Rule 13. By virtue of Rule 240, the counsel further submits that sufficient cause was also shown before the court and therefore, there was no occasion to give a finding to the effect that no sufficient reasons were shown. She would further submit that order of the learned Court below is completely misconceived to the effect that no sufficient cause has been shown to set-aside the ex-parte award.
5. During the course of argument, the appellant was apprised of

the case law reported in case of ***Ram Shiromani Mishra Vs. Shiv Mohan Singh and another AIR 1997 Madhya Pradesh 202.*** In such case principally it was held that appeal against the rejection of application under Order 9 Rule 13 is not tenable in absence of the mandate of the statute as order 43 has not been included for the purpose of Section 240 of the Motor Vehicles Act. In reply to that, learned Counsel submitted that the said judgment has not been followed by this Court and sought time to produce the order of this Court. However, the orders were not placed before this Court. The learned counsel further submit that the proposition of law has not been correctly held in such case. Learned Counsel for the appellant further submits that since the case has been admitted for hearing by this Court, which has not been objected by the respondents, therefore, the question of admissibility will not arise for consideration at the stage of final hearing.

6. Per contra counsel appearing on behalf of the claimant and the counsel appearing on behalf of the insurance company vehemently opposes the same. They would submit that the application filed under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte order was as vague as it could be. The application did not disclose as to on what date, the Court had proceeded ex-parte against the appellants and therefore, delay of each and every day was necessary to be explained. The counsel further submits that in absence thereof, the

application is being vague and devoid of substance, it was rightly rejected by the learned Court below.

7. I have heard the learned counsel for the parties at length and perused the order.
8. Since two questions have come up for consideration before this Court as to whether the provisions of Order 9 Rule 13 of C.P.C. was applicable to set-aside the ex-parte award before the Tribunal or not ? And second whether the appeal would lie before this Court under Order 43 of C.P.C..
9. Firstly the provisions of Order 9 Rule 13 are being dealt with as to whether the application under Order 9 Rule 13 of C.P.C. was tenable before the Court below to set-aside the ex-parte award.
10. The perusal of the order dated 25.10.2004 shows that the learned Court below has mainly relied on Section 169 of the Motor Vehicles Act, 1988 and has held that as per Sub-section (ii) of Section 169 of the Motor Vehicles Act, the provisions of Order – 9 Rule 13 shall not apply in the case before the Claims Tribunal. For shake of brevity Section 169 (ii) of the Motor Vehicles Act, is reproduced herein below :-

“Section 169 – Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under section 168, the Claims 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 1974).

(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 and matter relevant to the inquiry to assist it in holding the enquiry.”

11. Apart from the aforesaid Act, M.P. Motor Vehicle Rules, 1994 now C.G. Motor Vehicles Rules also have a relevance. Such rules have been framed in exercise of powers conferred U/s.28, 38, 65, 95, 96, 107, 111, 138, 159, 176, 211 and 213 of Motor Vehicles Act, 1988 (No.59 of 1988). The rules were framed by the State Government and the same having been published as required by Sub-section (1) of Section 212 of the said Act. The rules have a statutory forces. The relevant Rules 240 of M.P. Chhattisgarh Motor Vehicles Rules, 1994 is reproduced herein below :-

“Rule – 240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of Code of Civil Procedure 1908; Save as

otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rule 9 of 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”

12. Reading of the aforesaid rule would reveal that in respect of Order 9 of C.P.C., the provisions have been made applicable by the relevant rules. Section 169 of the Motor Vehicle Act, 1988 prescribes its procedure and powers of the Claims Tribunal, while holding an enquiry U/s.168 of the Act. The said Section is qualified with word that subject to any rules that may be made in this behalf. Therefore, applicability of said section do not arrest the applicability of any Rules which are framed under statute.
13. The C.G. Motor Vehicle Rules, 1994 (hereinafter referred to as 'Rules') has a statutory force. Reading of Rule 240 will make it further clear that for the purpose of Order 9, the Claims Tribunal shall have the power as that of Civil Court. Admittedly, in this case, an application was filed under Order 9 Rule 13 of C.P.C. Therefore, reading the provisions of Rule 240 laments the fact that the application under Order 9 Rule 13 of C.P.C. shall be applicable to set-aside the ex-parte award. Therefore, Section 169 and Rule 240 have to be harmoniously

constructed and the Rule 240 makes it clear that the expressed provisions as enumerated in such Rules shall be applicable, which includes Order 9 of C.P.C. Therefore, the rules do not supersede the provisions of the M.V. Act and text of the Rule 240 also screened with word save and otherwise provided in the Act. Therefore, Motor Vehicle Act do not limit the operation of Rule 240.

14. In view of the above discussion, I am of the opinion that the application filed under Order 9 Rule 13 of C.P.C. before the Court below to set-aside the ex-parte award of Claims Tribunal was maintainable.
15. The reading of the order also reflected that the Court has also observed that there was no sufficient cause was shown. Reading the entire order together it needs to give inference that the learned Court below was completely shadowed by the observation itself that the application under Order 9 Rule 13 of C.P.C. was not applicable.
16. Now coming to the fact of finding of maintainability of appeal, reading of Rule 240 do not take within its ambit the Order 43 of C.P.C. The Rule 240 of the Rules expressly states, unless otherwise provided in the Act or in those rules, no orders of the First Schedule of C.P.C. shall be applicable other than those mentioned in the list. The intention of Rule Making Authority is explicit, they never wanted to burden the

procedure of Claims Tribunal with all the provisions of of First Schedule of C.P.C. Therefore, only a chosen few orders have been mentioned in Rule 240 of the Rules.

17. In a case of ***Ram Shiromani Mishra Vs. Shiv Mohan Singh and another, reported in AIR 1997 Madhya Pradesh 202,*** the Court has held in para 10 as under :-

“10. The Rule 240 of 'the Rules' expressly states, unless otherwise provided in the Act or in those Rules, no orders of the First Schedule of C.P.C. shall be applicable other than those mentioned in the list. The intention of the Rule Making Authority is explicit. It did not want to burden the procedure of Claims Tribunal with all the provisions of First Schedule of C.P.C. Therefore, only chosen few orders have been mentioned in Rule 240 of 'the Rules'. Once this aspect of the Rule 240 is borne in mind, it would be crystal clear that the Rule Making Authority omitted application of Order 43, Rule 1 of C.P.C. to the cases under Claims Tribunal. The omission deliberate or otherwise has to be respected. There is no other provision of Motor Vehicles Act, 1988 (hereinafter called 'the Act' for short) or the Rules which makes Order 43 of C.P.C. applicable. Section 4(1) of C.P.C. reads as under:-

- “4. Savings – (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.”*

It is clear from the aforesaid section that the Rules of procedure of Special Tribunal or a Court shall override the provisions of C.P.C.. Thus the Rule 240 of 'the Rules' by implication overrides the provisions of C.P.C. and makes only certain provisions in the First Schedule applicable."

18. An appeal is the "right of entering a superior court and invoking its aid and interposition to redress an error of the court below" and "though procedure does surround an appeal the central idea is a right". The right is a statutory right and it can be circumscribed by the conditions of the statute granting it. It is not a natural or inherent right and cannot be assumed to exist unless provided by statute.
19. The aforesaid proposition has further been interpreted by the Supreme Court in the case between ***Super Cassettes Industries Ltd. Vs. State of U.P. Reported in (2009) 10 SCC 531***, wherein it has been held that right of appeal is not a natural or inherent right. It can not be assumed to exist unless expressly provided for by statute. Being a creature of statute, remedy of appeal must be legitimately traceable to the statutory provisions.
20. The reading of Rule 240 of Motor Vehicle Rules would further make it clear that in such rule, the right of appeal has not been provided as envisaged under Order 43, therefore, no statutory interpretation is warranted either to widen or restrict the same. The proposition was laid down by Hon'ble Supreme Court in

the case of ***Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and another reported in (2010) 4 SCC 772***. Accordingly, the provisions of rule can not be interpreted further, if such right is not conferred by expressed provision.

21. Therefore, in the case in hand, since the Rule 240 do not take within its sweep the provisions of Order 43 of C.P.C., therefore, such right can not be conferred by assumption. The said right can not be conferred by the wish and the concession of the parties as there can not be estoppel against the statute.
22. In view of the aforesaid principle laid down by Hon'ble Supreme Court as discussed in preceding para, reading the provisions of Rule 240 would make it clear that in absence of provisions in rule 240 of the Rules, the appellate power under Order 43 can not be read in between the lines.
23. As a result thereof, the appeal has no merit and is accordingly dismissed.
24. No order as to costs.

JUDGE

