



CR-5538-2023 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5538-2023 (O&M)
Date of decision: 05.03.2026

Ratan Kumar

...Petitioner

Versus

Amar Singh Jakhar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Jain, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 12.05.2023 (Annexure P-4) passed by the Motor Accident Claims Tribunal, Gurugram, whereby the evidence of the claimant has been closed by order.

2. Learned counsel for the petitioner has submitted that the petitioner is claimant who had filed claim petition under Section 166 of the Motor Vehicles Act, 1988 and the issues were framed in the present case on 20.05.2022. It is further submitted that the petitioner had examined six witnesses and thereafter, on 03.04.2023, he had moved an application for summoning the concerned authorized person/Record



Keeper of Rajasthan Roadways along with relevant record and had also deposited diet money with respect to the same. It is submitted that the said witness was duly served on 18.04.2023 as is apparent from tracking report which has been annexed as Annexure P-5 along with the present petition. It is submitted that in spite of the above, the trial Court, vide impugned order, instead of enforcing the presence of the said witness and taking coercive steps, had closed the evidence of the petitioner by order. It is submitted that the impugned order vide which the evidence of the petitioner has been closed deserves to be set aside as the same has been passed without following the procedure as prescribed in the provision of Order 16 Rule 10 CPC. It is submitted that only one witness who is summoned witness is to be examined and for the said purpose, effective opportunity be granted to the petitioner, with the help of the Court to examine the said witness.

3. On 20.09.2023, a Coordinate Bench of this Court was pleased to pass the following order:-

“Present: Mr. Amit Jain, Advocate for the petitioner.

The instant petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside impugned order dated 12.05.2023 (Annexure P-4), passed by the learned MACT, Gurugram, whereby evidence of the petitioner/claimant has wrongly been closed by Court order.

Notice of motion to respondent No.2 only, returnable on 01.12.2023.



In the meantime, Motor Accident Claims Tribunal, Gurugram is directed to adjourn the proceedings beyond the date fixed before this Court. 20.09.2023”

4. On 01.12.2023, contesting respondent No.2 was served but none has appeared on behalf of said respondent No.2. Even thereafter, none had put in appearance on behalf of respondent No.2 and even today, no one has come to oppose the present revision petition. Respondent No.1 has been proceeded against ex-parte before the trial Court which fact is apparent from the impugned order dated 12.05.2023 and thus, notice was issued to only respondent No.2.

5. This Court has heard learned counsel for the petitioner and has perused the paper book and is of the opinion that impugned order is against law and deserves to be set aside and the present revision petition deserves to be allowed.

6. This Court in its earlier judgment dated 29.07.2024 passed in **CR-3734-2023 titled Inder Pal and another Vs. Sat Pal (now deceased) through his LRs and others**, has held as under:-

“A perusal of the zimni orders would show that although coercive steps were taken to secure the presence of other witnesses but no coercive steps were taken to secure the presence of the above said two witnesses, who are material witnesses. It is a matter of settled law that as per the provisions of Order 16 Rule 10 CPC, where a witness fails to comply with the summons of the Court and the evidence of the said witness is material, then in such a situation, the Court is required to take coercive steps including



issuance of warrants, moreso when the party leading its evidence has done all that is in their hand for summoning them through the Court, which would include deposit of process fee and diet money, as has been done in the present case. A coordinate Bench of this Court vide order dated 12.07.2000 passed in CR-6416-1999 titled as “Piara Singh vs. Smt. Vidhya Wati” had held as under:-

“In such circumstances, it was not proper for the trial Court to close the evidence of the petitioner. If a witness in spite of service or in spite of being bound down does not appear, it is for the Court to procure his presence by issuance of warrants but the Court could not take the extreme step of closing the evidence of the petitioner. It is the duty of the Court to enforce attendance of the witnesses where the party has done everything in that regard and the Court can take recourse to the provisions of Order 16 Rule 10 CPC for compelling the attendance of recalcitrant witnesses.”

The learned trial Court has not considered the said provision and the settled proposition of law, resulting in passing of the impugned orders which deserve to be set aside.

Keeping in view the above said facts and circumstances, the present revision petition is partly allowed and the impugned orders dated 15.05.2023 (Annexure P-6) and dated 19.05.2023 (Annexure P-8) are set aside and the petitioners are permitted to examine the said two witnesses i.e., Gopal Bhushan Sharma and Gulshan Kumar and are granted two effective opportunities for the said purpose with the help/assistance of the trial Court. The trial Court would adopt the procedure for enforcing/securing the presence of the two witnesses in accordance with Order 16 Rule 10 CPC as also the settled law. The same would however be subject to the petitioners depositing with the trial Court an amount of Rs.10,000/- within a period of two weeks from today, which would



be paid to the plaintiffs in the present case. It is made clear that in case the said amount is not deposited, then the present revision petition would be deemed to have been dismissed”.

7. The law laid down in the above mentioned judgment applies on all fours in the present case.

8. A perusal of the paper book would show that the petitioner had filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation and thus, delay in the proceedings would primarily prejudice the rights of the petitioner. The issues in the present case were framed on 20.05.2022 and upto the date of passing of the impugned order i.e., 12.05.2023, the petitioner had examined as many as six witnesses and on 03.04.2023, an application, which has been annexed as Annexure P-3 with the paper book, was filed by the petitioner for summoning the following witness:-

“(i) Concerned authorised person/Record Keeper of Rajasthan Roadways, Jhunjhunu Bus Depot, Rajasthan along with record of Bus Registration No.RJ-18PA-5112, Route number, record of ticket, place of route (starting point to ending point of route) time along with record w.e.f. 24.01.2021 to 26.01.2021.”

A perusal of the said application would show that diet money of Rs.1650/- was deposited by the petitioner to summon the said witness. A perusal of Annexure P-5 which is tracking report would show that speed post sent to the said witness was duly delivered to him on 18.04.2023. In spite of the above, the trial Court instead of taking



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recourse of the provisions of Order 16 Rule 10 CPC for compelling attendance of the said witness, has closed the evidence of the petitioner by order. The said order is against law and thus, deserves to be set aside.

9. Keeping in view the abovesaid facts and circumstances, the present revision petition is allowed and impugned order dated 12.05.2023 is set aside and the petitioner is granted two effective opportunities for examining the abovesaid witness with the help/assistance of the trial Court. The trial Court would adopt the procedure for enforcing/securing the presence of the summoned witness in accordance with Order 16 Rule 10 CPC and also as per the settled law.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

05.03.2026

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No