

Santhosh Vs. Kumar

Santhosh Vs. Kumar

SooperKanoon Citation : sooperkanoon.com/1130996

Court : Kerala

Decided On : Feb-25-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Santhosh

Respondent : Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 25TH DAY OF FEBRUARY 2014 6TH PHALGUNA, 1935 O.P.(MAC).No.4 of 2014 (O) ----- AGAINST THE

ORDER

IN I.A.NO.1018 of 2010 IN O.P.(MV).1271/2004 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, NEYYATTINKARA. -----

PETITIONER/PETITIONER:- ----- SANTHOSH, AGED 38 YEARS, S/O.PALAYYANNADAR, CHARIVUVILA PUTHEN VEEDU, MANGALATHUKONAM, NEAR KATTUMUDIPURA, VENGANOOR VILLAGE. BY ADVS.SRI.T.K.VIPINDAS SRI.K.V.SREE VINAYAKAN SRI.K.M.MUHAMMED HUSSAIN. RESPONDENTS/RESPONDENTS:-

----- 1. KUMAR, S/O.SANKARAN, VIII/764, OOTTATHARA VEEDU, EDAGRAMOM, PAPPANAMCODE P.O., THIRUVANANTHAPURAM - 695 008.

2. SAJI, S/O.DAMODARAN, TC641419, KARUMOM PARAMBUVILAKOM, THIRUVALLOM WARD, NEMOM VILLAGE - 695 004.

3. THE MANAGER, ORIENTAL INSURANCE CO. LTD, RAMAKRISHNA BUILDING, ARISTO JUNCTION, THIRUVANANTHAPURAM - 695 002. R3 BY ADVS. SRI.GEORGE CHERIAN (SENIOR ADVOCATE) SMT.K.S.SANTHI SMT.LATHA SUSAN CHERIAN THIS ORIGINAL PETITION (MAC) HAVING BEEN FINALLY HEARD ON 25.02.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- OP (MAC).No.4 of 2014 (O) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1. COPY OF THE O.P(MV)NO.1271/04 FILED BY THE PETITIONER BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA. EXHIBIT P2. COPY OF THE WRITTEN STATEMENT FILED BY THE 3D RESPONDENT. EXHIBIT P3. COPY OF THE RESTORATION PETITION AS IA10182010 IN OP(MV).1271/04 DATED 53.10. EXHIBIT P4. COPY OF THE

ORDER

OF THE IA101810 IN OPMV127104 DATED 8.11.13. RESPONDENT(S)' EXHIBITS:- ----- NIL. vku/- (true copy) K. Vinod Chandran, J ----- O.P.(MAC).No.4 of 2014 ----- Dated this the 25th day of February, 2014

JUDGMENT

The petitioner was injured in an accident that occurred in the year 2004. The petitioner filed claim petition, alleging permanent disability, evidenced by Ext.P1 before the Motor Accidents Claims Tribunal (for brevity "MACT" or "Tribunal"), Neyyattinkara. The same was numbered as O.P. (MV).No.1271/2004 and the same stood dismissed for reason of the petitioner having not produced any documents on 10.2.2010. The petitioner then, filed a petition for setting aside the ex-parte order and restoration of the claim petition by Ext.P3, within the period of limitation. The same was dismissed by Ext.P4 order finding that neither did the petitioner adduce any evidence substantiating the averments made in the affidavit nor has the petitioner produced any document to evidence that the petitioner was

laid up on that particular day. The petitioner assails Ext.P4 order in the present proceedings. OP(MAC).No.4 of 2014 - 2 - 2. Since the accident itself was of the year 2004 and the claim petition dismissed for non-production of the documents, this Court directed the Registry to call for a report from the Tribunal. The Tribunal has submitted a report dated 24.01.2014, in which it has been stated that the claim petition filed in the year 2004 was posted for the evidence of the petitioner on 12.01.2007 and obviously no documents to substantiate the claim were filed even on that date. The case was adjourned to various dates in the year 2007 and 2008 and on 04.11.2009 since again no documents were seen filed, it was specifically directed that the original medical records shall be produced within 20 days. The matter was then posted to 18.01.2010, when the petitioner prayed for time to produce medical records and it was adjourned to 10.02.2010; again directing production of medical records within 10 days. On 10.02.2010 also, the applicant was not ready to adduce evidence and no documents were produced and, hence, the claim petition stood dismissed. OP(MAC).No.4 of 2014 - 3 - 3. True, the petitioner had approached the Tribunal within the period of limitation, with an application to set aside the ex-parte award, which, in effect, is a dismissal for default; invoking Order IX Rule 9 of the Code of Civil Procedure (for short "CPC"). The application was considered and rejected by the impugned order. The Tribunal noticed the contention of the petitioner that he was laid up due to fever on the day when the matter was posted and it was noticed that even earlier, a number of postings were given to produce documents, which the petitioner had not produced. The learned counsel for the petitioner would rely on the decision in Mahendra Rathore v. Omkar Singh & Others [(2002) 10 SCC673 to contend that Order IX Rule 9 applications filed to set aside dismissals for default should be considered favourably on sufficient cause being shown.

4. A reading of Mahendra Rathore (supra) would only indicate that the judgment was passed in the peculiar facts and circumstances of that case. It was specifically noticed that the OP(MAC).No.4 of 2014 - 4 - application filed under Order IX Rule 9 was supported by a medical certificate, showing the applicant had fallen sick on the date of hearing and the applicant had also deposed to that end, which deposition stood uncontroverted. It was only in such circumstance, that the Hon'ble Supreme Court declared, that, a justice oriented approach should be

adopted by Courts and not a too technical or pedantic approach.

5. The facts coming to fore in the present Original Petition puts it on a different footing, than that narrated in Mahendra Rathore (supra). But for the mere assertion of the petitioner that he was suffering from fever, no medical certificate is produced. Again, even if the petitioner had fallen sick on the date of hearing, that is not an explanation for not producing the medical records in the claim petition, filed in the year 2004 and posted for evidence in 2007, even when the same was specifically posted in 2010 for production of the medical records. It is also pertinent that the petitioner did not think it fit to produce the medical records along with the application under Order IX OP(MAC).No.4 of 2014 - 5 - Rule 9 or even produced attested copies before this Court in the writ petition. The default in appearance though may be for a single day, i.e., on 10.02.2010, the default in non-production of documents stares at the petitioner. Six years from the date of filing of the claim petition, no medical records are seen produced; nor are they even referred to in the application to restore the claim petition or in the present Original Petition. This Court is not persuaded to condone the default of the petitioner in not producing the medical records before the Tribunal. The Original Petition, for the reasons stated above, stands dismissed, but without costs. Sd/- K.Vinod Chandran, Judge vku/- (true copy)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com