

Deep Chand Vs. Additional District Judge, Allahabad and ors.

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Court : Allahabad

Decided On : Jan-17-1992

Reported in : 1993ACJ665

Judge : M.P. Singh, J.

Appeal No. : Civil Misc. Writ Petition No. 3908 of 1992

Appellant : Deep Chand

Respondent : Additional District Judge, Allahabad and ors.

Disposition : Petition dismissed

Judgement :

M.P. Singh, J.

1. An accident took place of on 11.12.1982 at 3.00 p.m. in Allahabad, Rajendra Bahadur Singh aged about 30 years died as a result of the same leaving behind Arti Devi, widow, two daughters Archna and Kalpana aged 11 and 21 years respectively and two minor sons Arunendra Pratap and Ravendia Pratap.

2. A claim petition under Section 110-A of the Motor Vehicles Act was filed claiming a sum of Rs. 5,00,000/- as compensation. The case set up was that the accident took place due to rash and negligent driving of truck No. URA 2798. It was dismissed in default on 28.3.1984. A restoration application was filed. It was

- allowed on 6.11.1984 on payment of costs. The order was passed after hearing counsel for both the parties and in their presence.
3. The next date fixed in the case was 19.2.1985. Mr. U.N. Sinha, learned Counsel appealing on behalf of the petitioner, appeared and accepted Rs. 50/- as costs. The petitioner was also present.
 4. Thereafter the petitioner did not appear on the subsequent dates with the result the claim petition was decreed ex parte on 21.8.1987 for a sum of Rs. 5,00,000/-. The petitioner and the insurance company were directed to pay the amount within sixty days from the date of the order.
 5. An application for setting aside the ex parte order was filed by the opposite party No. 7, Oriental Fire and General Ins. Co. Ltd. It was rejected on 29.4.1989. Against the said order the insurance company filed F.A.F.O. No. 1130 of 1989 in this Court on 28.7.1989. It is still pending.
 6. The petitioner filed an application on 21.3.1990 for setting aside the ex parte decree dated 21.8.1987 (Misc. Case No. 326 of 1990). It was rejected on 3.9.1991. The present writ petition is directed against this order.
 7. Heard learned Counsel for the petitioner and perused the record.
 8. Admittedly the claim petition was dismissed in default on 28.3.1984. The claimants filed an application for setting aside the same. This application was allowed on 6.11.1984 on payment of costs after hearing the learned Counsel for both the parties and in their presence. The next date fixed was 19.2.1985. The petitioner appeared along with his counsel Mr. U.N. Sinha. He accepted Rs. 50/- as costs. Issues were framed on that date.
 9. On 16.8.1985 an application for adjournment was filed on behalf of the petitioner on the ground that his counsel was ill. It was allowed.
 10. On 27.1.1986 the court was informed by the counsel for the insurance company that Mr. U.N. Sinha, the learned Counsel appearing on behalf of Deep Chand (the petitioner), was dead. The petitioner did not take any steps for

engaging another counsel.

11. The claim petition was decreed ex parte for a sum of Rs. 5,00,000/- on 21.8.1987. Execution proceedings started. So the petitioner filed an application on 21.3.1990 for setting aside the ex parte decree dated 17.8.1987. It was rejected on 3.9.1991 by means of the impugned order.

12. The case set up by the petitioner was that he had no knowledge about the order dated 6.11.1984 by means of which the order dated 28.3.1984 dismissing the claim petition in default was set aside and the case was restored.

13. Now the first question to be decided by this Court is whether the petitioner had knowledge about the order dated 6.11.1984. It has come on record that Mr. U.N. Sinha, appealing on behalf of the petitioner, was heard in presence of the petitioner on 6.11.1984 when the restoration application was allowed. Not only this, on the next date, i.e., 19.2.1985 the petitioner as well as his counsel were present when costs were accepted and issues were framed. These facts show that the petitioner knew that the claim petition has been restored to its original number. It was his duty to find out about the progress of the case. He never cared to know about the further proceedings. He kept quiet for two years. In the meantime the claim petition was decreed on 21.8.1987.

14. The learned Counsel appearing on behalf of the petitioner contended that after the dismissal of the claim petition on 28.3.1984 he did not receive any fresh notices from court about filing of the restoration application. The contention is misconceived inasmuch as the restoration application was contested by the petitioner and after hearing him and his counsel it was allowed on 6.11.1984.

15. The next submission raised by him was that when the court was informed on 27.1.1986 about the death of Mr. U.N. Sinha, learned Counsel appearing on behalf of the petitioner, then it was the duty of the court to have sent fresh notices to him to engage another counsel. Except blaming the court he did not place any provision either in the Motor Vehicles Act or in the Rules framed thereunder or under the General Rules (Civil) or any other provision of law under which it could be said that it was mandatory on the part of the court to do so. In my opinion the

procedure adopted by the court did not suffer from any illegality or irregularity.

16. The Tribunal has recorded a clear finding while rejecting the petitioner's application that he had knowledge of the restoration of the claim petition which is a finding of fact and cannot be interfered with by this Court under Article 226 of the Constitution of India.

17. Not only this that the claim petition was restored on 6.11.1984 in his presence, the petitioner again appeared along with his counsel on 19.2.1985 when the issues were framed. So he knew about the progress of the case. Thereafter he became negligent and did not pursue the matter. There was no illegality in the order of the Tribunal in rejecting the petitioner's application for setting aside the ex pane decree.

18. The entire attack of the learned Counsel for the petitioner was confined to an observation made in the order dated 21.8.1987 that the allegations in the claim petition remained uncontroverted and unrebutted. According to him, the claim petition was controverted by filing a written statement. Even if it is a fact, that will not make any difference in the result of the case inasmuch as there was no rebuttal on record. If the petitioner was negligent in contesting the case, the court had no option but to proceed with the matter and pass orders in accordance with law.

19. The accident took place in 1982. The claim petition was filed in 1983. It was allowed after five years, i.e., on 21.8.1987. The court has to administer justice. The widow and the five minor children could not be left as helpless spectators in the court. The litigation was rightly not permitted to prolong indefinitely.

20. The Tribunal took about three years to decide the claim petition. It cannot be said that it was done in haste. It did not allow the claim petition to remain pending for long. Order was passed in the interest of justice. The claimants had no other source of livelihood. Their bread-earner died in the accident. Delay due to technicalities would have caused an irreparable injury to them. It may have amounted to denial of justice.

21. This court while exercising its powers under Article 226 of the Constitution of India is not inclined to interfere with the finding of fact. This court is not sitting as a court of appeal and as such has no jurisdiction to reappraise the evidence and record its own findings. Reference may be made to the Supreme Court decisions in Muni Lal v. Prescribed Authority AIR 1978 SC 29, Beam Singh v. Union of India AIR 1977 SC 388, Sheikh Mahomad Umarsaheb v. Kadalaskat H. Karibsab AIR 1970 SC 61.

22. After giving my anxious consideration to the controversy, I find that there is no merit in the writ petition and it is dismissed in limine.

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