

Jacob Thomas Vs. Pandian

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Court : Kerala

Decided On : Sep-01-2005

Reported in : I(2006)ACC204; 2006ACJ464; AIR2006Ker77; [2006(2)JCR250]; 2005(4)KLT545

Judge : J.B. Koshy,; K.M. Joseph and; K.R. Udayabhanu, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 110B, 140, 158(6), 162, 163A, 165 to 174 and 176; Land Acquisition Act - Sections 18, 19, 23, 24, 25 and 26; Workmen's Compensation Act; Motor Vehicles Rules - Rules 168 and 169; Kerala Motor Vehicles Rules, 1989 - Rules 21, 371, 372, 373, 377, 378, 378(5), 379, 380, 392 and 395; Kerala Motor Accidents Claims Tribunal Rules, 1977; Assam Motor Accidents Claims Tribunal Rules; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 5, Rules 9 to 13 and 15 to 30 - Order 6, Rules 16 to 18 - Order 7, Rule 9 - Order 9, Rules 2, 3, 4, 6, 8 and 9 - Order 10, Rule 9 - Order 13, Rules 3 to 10 - Order 16, Rules 1 to 21 - Order 17, Rules 2, 3 and 12 - Order 23, Rules 1 to 3 - Order 26

Appeal No. : M.A.C.A. No. 327 of 2004

Appellant : Jacob Thomas

Respondent : Pandian

Judgement :

J.B. Koshy, J.

1. The question referred for consideration of the Full Bench is whether the Motor Accidents Claims Tribunals have jurisdiction to dismiss an application for compensation filed before them for default/non-prosecution by invoking the powers under Rule 395 of the M.V. Rules read with Order IX of the Code of Civil Procedure. In *Lukose v. Govindan Nair* (1990 (1) KLT 378), a Division Bench of this Court observed as follows:

'In other words, the Act and Rules do not empower the Claims Tribunal to dismiss an application merely for default of the applicant without arriving at findings and without advertng to reasons after the stage of framing issues.' (paragraph 5)

The Court was of the opinion that after framing issues as provided under Rule 379 of the Kerala Motor Vehicles Rules, 1989 (hereinafter referred to as 'the Rules'), the Tribunal has no power to dismiss the case for default. In *Saramma Scoria and Ors. v. Mathai and Anr.* (2002 (2) KLT 404 : 2002 (2) ILR 191.) relying on the decision in *Lukose's* case (*supra*), another Division Bench held as follows:

'In other words, the Motor Vehicles Act and Rules do not empower the Claims Tribunal to dismiss an application merely for default of the applicant without arriving at findings and without advertng to reasons after the stage of framing issues.' (paragraph 7)

2. In the present reference order, the Division Bench was of the opinion that the above view should be reconsidered as relevant rule making Order IX of the Code of Civil Procedure applicable to the proceedings before the Tribunal were not considered in the above decisions. Rule 21 of the Kerala Motor Accidents Claims Tribunal Rules, 1977 (which remained in force till the Kerala Motor Vehicles Rules, 1989 were framed under the Amended Act) made Order IX CPC applicable to proceedings before the Claims Tribunal. Similarly, Rule 395 of the Kerala Motor Vehicles Rules, 1989 (in short 'the Rules') makes the provisions of Order IX applicable to proceedings before the Tribunal. In the reference order it is observed that:

'Thus, there is nothing to show that the existence of the said Rules 21 and 395 were brought to the notice of the said Benches. Those rules have not been specifically adverted to or considered. The conclusion that the Motor Accidents Claims Tribunal cannot dismiss a claim petition for default/non-prosecution is thus reached without considering and taking specific note of the provisions of Order IX CPC particularly Order IX Rule 8 CPC.'

But, in the case of Lukose (supra), reference is made to the decisions of the Gauhati High Court in Samsul Huda v. London and Lancashire Insurance Co. Ltd. and Ors. (AIR 1972 Gauhati 35) wherein it was held Tribunal has no jurisdiction to dismiss application for default of appearance. In the said ruling, the Court has considered similar provisions in the Assam Motor Accidents Claims Tribunal Rules as in Rule 21 and Rule 395 of the Kerala Rules. Facts of that case is also stated in paragraphs 13 and 14 of the above decision as follows:

'13. On the facts also it appears that the case was fixed for hearing on 30-6-1969 and the claimants filed an application on 26.6.1969 for adjourning the hearing of the case fixed on 30-6-1969. On 30-6-1969 the counsel for the claimants filed his hajira and an application on behalf of the opposite parties also was filed to the effect that the case should be proceeded with and disposed of expeditiously. In the circumstances we hold that the Claims Tribunal in dismissing the claim petition for default acted without jurisdiction. In refusing to decide the issues and make an award, the Claims Tribunal in the instant case failed to exercise jurisdiction vested in it under Section 110-B and the rules framed thereunder.

14. In the result we quash the impugned order dated 30-6-1969 and direct the Claims Tribunal to proceed with the case in accordance with law after giving opportunities to the parties to produce evidence if they so desire. The petition is accordingly allowed and the Rule is made absolute.'

There, the claimant sought for an adjournment of the proceedings of 30-6-1969 in advance on 26-6-1969 itself and vakalath was filed on that day. Yet, the claim petition was dismissed for absence of the claimant on 30-6-1969 which necessitated the High Court for interference. A single Judge of the Orissa High Court in Suresh Kumar Mahaparna and Ors. v. Brundaban Barik and Anr. (1982

ACJ 296) while holding that no appeal will lie against the order of dismissal of a claim petition for default as such an order is not an 'award' following the Gauhati High Court's decision (supra) and observed that such orders are nullity and it is open to the Tribunal to ignore the impugned order and proceed with the case from the stage at which it was dismissed for default. But, appeal was dismissed for non-maintainability.

3. We may now consider the relevant statutory provisions. By Section 165 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as 'the Act'), State Government is authorised to constitute Motor Accidents Claims Tribunals for the purpose of adjudicating the claims for compensation in respect of accidents involving the death or bodily injuries to the persons or damages to any property, arising out of the use of motor vehicles including claiming under Sections 140 and 163-A. Section 166 of the Act enables the claimants to file claim petitions before the Tribunals. Tribunals shall also treat report of accidents forwarded to it under Section 158(6) of the Act as an application. What is to be done by the Claims Tribunals on receipt of such applications is mentioned in Sections 168 and 169 of the Act. Relevant provisions of Rules 168 and 169 of the Act are quoted as follows:

'168. Award of the Claims Tribunal:--

(1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

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).'

(emphasis supplied)

Section 176 of the Act authorises the Government to make rules. Relevant provisions are quoted as follows:

'176. Power of State Government to make rules:-- A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:-

xxx xxx xxx xxx(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal.'

The Kerala Motor Vehicles Rules, 1989 was accordingly framed. Chapter X of the above Rules deals with the procedure to be adopted by the Claims Tribunals. Similar provisions were earlier contained in the Kerala Motor Accidents Claims Tribunal Rules, 1977. Rule 371 of the Rules deals with filing of application. Relevant rules regarding the procedure to be adopted by the Tribunals are as follows:

'372. Examination of applicant:--On receipt of an application under Rule 371 the Claims Tribunal may, examine the applicant on oath, and the substance of such

examination, if any, shall be reduced to writing.

373. Summary disposal application:--The Claims Tribunal may, after considering the application and the statement, if any, of the applicant recorded under Rule 372 dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.

377. Notice to parties involved:--(1) If the application is not dismissed under Rule 373 the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident, its insurer and its driver a copy of the application together with a notice of the date on which it will hear the application and may call upon the parties to produce on that date any evidence that they may wish to tender.

378. Appearance and examination of parties:--

xxx xxx xxx xxx(5) The Claims Tribunal shall obtain necessary information from the police, medical and other authorities and proceed to settle the claims, whether the parties who were given notice appeared or not on the appointed date.

379. Framing of issues:-- (1) After perusing the application and the written statements, if any, filed under Rule 378 and also the result of the examination, if any, under the same rule, of the parties, the Claims Tribunal shall frame issues before the evidence is recorded.

380. Summoning of witnesses:-- If an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for a just decision of the case:

392. Judgment and award of compensation:-- (1) The Claims Tribunal in passing orders, shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer, or the owner in the case of vehicles which are not insured and also the person or persons to whom compensation shall be paid.

395. Code of Civil Procedure to apply in certain cases:-- The provisions of rules 9 to 13 and 15 to 30 of Order V, rules 16 to 18 of Order VI, Order IX, Rules 3 to 10 of Order XIII, rules 1 to 21 of Order XVI, Rules 1 to 3 of Order XXIII and Order XXVI of the First Schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to the proceedings before the Claims Tribunal.'

Since provisions of Order IX of CPC are adopted, the relevant provisions are extracted below:

'Appearance of Parties and consequence of non-appearance:--

1. Parties to appear on day fixed in summons for defendant to appear and answer:-- On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs:-- Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the Court-fee or postal charges (if any) chargeable for such service, or to present copies of the plaint or concise statements, as required by Rule 9 of Order 7, the court may make an order that the suit be dismissed:

Provided that no such order shall be made, if, notwithstanding such failure, the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.

3. Where neither party appears, suit to be dismissed:-- Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

4. Plaintiff may bring fresh suit or Court may restore suit to file:-- Where a suit is dismissed under Rule 2 or Rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for such failure as is referred to

in Rule 2, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

5 to 7 xxx xxx xxx8. Procedure where defendant only appears:-- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against plaintiff by default bars fresh suit:-- (1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But, he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.'

(emphasis supplied)

The rules framed under the Act show that application for compensation is to be filed under Rule 371. On receipt of the application, the applicant can be examined under Rule 372. If the Tribunal after considering the application and the statement, if any, recorded under Rule 372 has the power to summarily dismiss the application under Rule 373 if there are no grounds for proceeding therewith. Notice to the respondents (the owner, driver and the insurer) need be issued under Rule 377 only if the petition is not summarily dismissed under Rule 373. Rule 378 deals with appearance of the parties and the procedure to be followed. Rule 378(5) mandates that whether the parties who were given notice appeared or not on the appointed date, the Tribunal must obtain necessary details and proceed to settle the claim. Rule 378 only refers to the non-appearance of parties to whom notice has been issued under Rule 377, i.e., the owner, insurer and the driver of the vehicle involved in the accident. Claimant is bound to attend the hearing and he is not entitled to separate notice as he is bound to take notice. After notice to

all, Tribunal can collect evidence from police, medical and other authorities and proceed with the case. The words 'to settle the claims' used in Rule 378 (5) is not denoting settlement or compromise. Claims can be compromised only if both contesting parties come to an agreement. The Rule only means that the Tribunal can proceed with the case even if one or all parties are absent subject to, of course, other rules and one of such rule is Rule 395. Rule 379 mandates that the Tribunal has to frame issues after perusing the relevant materials available. Rule 392 mandates the manner in which the judgment and award of compensation is to be passed/rendered by the Tribunal. It is stipulated that the Tribunal must record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings. The award must specify the amount of compensation to be paid by the insurer or the owner and also the person or persons to whom compensation shall be paid. Rule 395 makes certain provisions of the CPC applicable to the proceedings before the Claims Tribunal. Order IX of the CPC is specifically made applicable. Order IX of the CPC, in turn, speaks of the consequences or non-appearance by the claimants (plaintiffs) and the defendants. Rule 2 speaks of dismissal of the claim/suit when the plaintiff fails to pay costs and consequently there is failure to serve summons. Rule 3 speaks of the consequence or dismissal which would ensue if neither party appears on the date of hearing. Rule 4 speaks of the consequence/effect/remedy when the suit is dismissed under rules 2 and 3 of CPC. Rule 8 contemplates a situation where the defendant appears and the plaintiff does not appear when the suit comes up for hearing. The court can make an order that the suit be dismissed unless defendant admits the claim or part thereof in which case a decree can be passed upon such admission. Rule 9 speaks of the effect/consequences and the remedy available when a suit is dismissed under Rule 8. When Order IX is specifically made applicable, we cannot hold that the Tribunal has no power to dismiss the application for default when the case is posted for hearing if claimant is absent and respondents are present. But, Section 168 did not insist that in all cases award should be passed but only directed that the Tribunal 'may make an award'. Once it makes a judgment or award, mandates of Rule 392 has to be complied with.

4. Power of dismissal of suit under Order IX Rules 2 and 3 of CPC are directory and not mandatory as the words used is 'Court may'. Even if suits are dismissed

under Rule 2 or Rule 3, plaintiff is entitled to bring a fresh suit or file an application for restoring the suit under Rule 8. But, if the plaintiff is absent and defendants are present, Court is bound to dismiss the suit as the words used are 'the Court shall make an order that the suit is dismissed.' An order of dismissal for default is not a decree and hence not appealable. Unlike in the case of orders of dismissal under rules 2 or 3, when an order of dismissal is passed under Rule 8, no fresh suit in respect of the same cause of action can be filed but he has to apply for restoration of the suit under Order IX Rule 9. Allahabad High Court in Shetty Mohimmor v. Rukmini Kumar (AIR 1986 All. 506) expressed the opinion that the Court can dismiss the suit under Order IX Rule 8 only when the suit called on for hearing and not when it is posted for some interlocutory matters. A Division Bench of the Nagpur High Court in Manaklal Bhimraj Mahesri v. Mt. Phulabai (AIR 1939 Nagpur 213) held that Court should not lightly dispose of litigation without going into the merits even though Courts are bound to dismiss the case for default in certain circumstances like the circumstances mentioned in Order IX Rule 8. But, it also held that after the issue stage the suit is further progressed, the Court is not bound to dismiss the case under the powers under Order IX Rule 8. But, it can use the power under Order XVII Rule 2. It was observed as follows:-

'It may be laid down as a certain proposition which hardly admits of exceptions that Courts should not lightly dispose of litigation without going into the merits. It is also equally plain that Courts are bound in certain circumstances to dismiss cases for default. One case is that indicated in Order 9, Rule 8. It is true that when a case reaches the stage that this had (that is to say, after the issue stage has in part been passed) the Court is not compelled to exercise its powers under Order 9, Rule 8, but is given power to make another order under Order 17, Rule 2, and in any doubtful case the Court should so act.'

In other words, Court can, in such circumstances, grant adjournments. In Order XVII Rule 2, the word used is 'may' and if any one of the parties fail to appear Order XVII Rule 12 also gives power to proceed with the case in one of the modes directed by Order IX and it has also given discretion to make such other order as the Court deems fit. If the suit is dismissed under Order XVII Rule 2 read with Order IX Rule 8, it can be set aside under Order IX Rule 9. But, if the Court

decides to proceed with the case and pass an order as provided under Order XVII Rule 3 only appeal will lie. In *Divakara Panicker v. Pathumma* (1990 (2) KLT 266), it was held that the power under Order XVII Rule 3 should be used only sparingly in exceptional cases. The decision of the Supreme Court in *Khazan Singh v. Union of India* (2002 (1) KLT 644 SC) was cited before us to show that under Section 18 of the Land Acquisition Act once the case is referred Court cannot dismiss the reference for default. It is bound to pass an award. In that case, the Supreme Court set aside the order passed by the Additional District Court by which the reference was dismissed for default and directed the Court to answer the reference. A reading of Sections 18, 19, 23, 24, 25 and 26 of the Land Acquisition Act would show that the word used is 'shall' and, therefore, once the reference is made under Section 18, the Court is bound to make an award in the form prescribed under Section 26. But, Section 168 of the Motor Vehicles Act only states that the Tribunal may make an award. It does not prohibit dismissal of the case for default as contemplated under Order IX Rule 8 or decide the case even if respondents are absent after declaring the respondents *ex parte* under Order IX Rule 6 as Order IX of the CPC was specifically incorporated under Rule 395 of the Motor Vehicles Rules, 1989.

5. We are of the opinion that a harmonious interpretation is necessary in this matter. It has been repeatedly held by the Apex Court that the Motor Accidents Claims Tribunal are constituted under the Act so as to advance speedy remedy to the injured as well as legal heirs of the deceased and the Tribunal is bound to mitigate the hardship of the injured. In *N.K.V. Brothers (P) Ltd. v. M. Karumai Ammal* : [1980]3SCR101 the Supreme Court held that the Court should not succumb to niceties, technicalities and mystic maybes. The above case was followed by the Division Bench of this Court in *Sharlet Augustine v. Raveendran* (1992 (1) KLT 795) and held that in interpreting a social welfare legislation, the Court will normally adopt an interpretation which would favour persons sought to be benefited by the legislation. Claims Tribunals are constituted under Section 165 of the Motor Vehicles Act. It is true that the Tribunal can call for the records and collect evidence. When the claim is taken on file and notices are issued to respondents even in the absence of parties, the Tribunal can pass award on merits in view of the clear provisions of the Rules (See Rule 378 (5)). It is also true

that under Rule 395, certain provisions of CPC including Order IX is also adopted only 'so far as may be'. We are of the opinion that the words 'so far as may be' gives a wide discretion to the Tribunal. After framing issues the Tribunal has got power either to collect evidence and proceed to settle the claim under Rule 378 (5) and can dispose of the case on merits or can dismiss the case for default under Order IX Rule 8 if the claimant is absent and defendants are present and they are not admitting any part of the claim made by the claimants in view of Rule 395. The words 'as the case may be' used in Rule 395 shows that a harmonious construction is possible and wide judicial discretion is given to the Tribunal in this matter. Even though Order IX Rule 8 uses the word 'shall' rigor in the Rule is reduced because it is adapted by Rule 395 only 'as the case may be'. But, the judicial discretion vested in the Tribunal shall be used in such a way so as to mitigate the hardship of claimants considering the object of the Act. It is the duty of the court to avoid 'a head on clash' between the provisions of the same Act or Rules. As held by the Apex Court in *Raj Krushna v. Binod Kanungo* : [1954]1SCR913 , 'whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise'. Such construction shall be adopted unless it is impossible to effect reconciliation between them. It was observed by the Supreme Court in *Venkataramana Devaru v. State of Mysore* : [1958]1SCR895 as follows:

'The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction.'

Specific application of Order IX by Rule 395, if discarded, it will amount to reduce that provision as a 'useless lumber' or 'dead letter'. It is not harmonious construction. Harmonious construction is not to destroy the effect of one of the provisions as held by the Apex Court in *J.K. Cotton Spinning and Weaving Mills v. State of UP* (AIR 1951 SC 1170). The same principles of harmonious construction has to be adopted while interpreting the statutory rules also as was held by the Supreme Court in *A.N. Sehgal v. Raje Ram Sheoram* : (1991)1ILLJ50SC . We are of the opinion that when a claim is filed under Section 166 read with Rule 371 and

it is not dismissed under Rule 373, the Court after issuing notice to the respondents, even if the claimant is absent or the respondents absent, the Tribunal has got power to proceed with the case either by collecting evidence as provided under Rule 378 (5) or dispose of the case as provided under Order IX of CPC read with Rule 395. Hence, the view that after framing issues the Tribunal 'cannot dismiss the application for default under no circumstances' is not correct. Where the Tribunal is genuinely satisfied that there are contumacious laches on the part of the claimants in prosecuting their claims and where the claimants are not interested in prosecuting their cases, the Tribunal can dismiss the application for default using Order IX Rule 8 in appropriate cases. To the above extent the decisions in *Lukose v. Govindan Nair* (1990 (1) KLT 378) and *Saramma Scaria and Ors. v. Mathai and Anr.* (2002 (2) KLT 404 : 2002 (2) ILR 191), are overruled.

6. When the claim is dismissed for default, parties will be free to approach the Tribunal to set aside such orders by filing application under Order X Rule 9. But, if the Tribunal decides the matter on merit suo motu collecting evidence, the only remedy open to the claimant will be to file an appeal before the High Court as provided under Section 173 of the Act. After the judgment in *Saramma's case* (supra) we have seen that many Claims Tribunals are dismissing the cases on merits holding that no evidence is adduced on the side of the claimant and claimant is absent. In such circumstances, the claimant will be compelled to approach the High Court which may incur heavy expenses and inconveniences. If the Tribunal dismisses the case for default, he can approach the Tribunal itself of the place which he has selected in view of Section 166(2) of the Act, to file the claim petition for setting aside the order of dismissal of the case for default and the Tribunal should be liberal in its approach when such applications are filed. It was also pointed out to us that even though there are provisions for suo motu collecting evidence in view of the inadequacy of staff, the number of claim petitions pending before the Tribunals (we are told that in many of the Tribunals in Kerala more than 10,000 applications each are pending), it will be practically impossible to collect evidence.

7. As for the facts of this case are concerned, appellant suffered injuries in a motor accident. His right hand had to be amputated at the right shoulder joint. He

claimed a total amount of Rs. 15 lakhs as compensation. When the case was posted for trial and hearing, the claimant and his counsel were absent. Considering the decision in Saramma Scoria and Ors. v. Mathai and Anr. and Lukose v. Govindan Nair, the Tribunal proceeded with the case and passed an award on merit considering the 16 documents produced which were marked suo motu as Exts.A1 to A16 granting a total compensation of Rs. 1,49,500. According to the claimant, if the case was adjourned and one more opportunity was given, he would have been able to substantiate his case. The claimant had extensive crush injury to his shoulder and right forearm and elbow which resulted in amputation of the hand. He has got a case that the Tribunal granted only a lump sum of Rs. One lakh for disability without considering his income or percentage of disability suffered. Considering the provisions in the Schedule to the Workmen's Compensation Act, loss of earning capacity is 90%. (See: Schedule I Part II Item 1.) We have not seen the claimant and there is no ample material to assess compensation. Claimant has to adduce evidence regarding his income, prospects etc. We agree with the contentions of the appellant. Considering the nature of injuries suffered and the amputation of the arm at the shoulder level and considering his income, the Tribunal should have calculated compensation on a scientific basis and this is a fit case where the matter should be remanded for allowing the claimant to adduce further evidence and substantiate his case. Of course, the respondents will also get an opportunity to adduce evidence. Parties may appear before the Tribunal on 5-12-2005. The appeal is allowed by way of remand.