

Vimla Devi and anr. Vs. Majeed Mistri and anr.

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Court : Rajasthan

Decided On : Apr-23-2002

Reported in : I(2003)ACC127; 2002(4)WLC338

Judge : S.K. Keshote, J.

Appellant : Vimla Devi and anr.

Respondent : Majeed Mistri and anr.

Judgement :

S.K. Keshote, J.

1. Heard learned Counsels for the parties, perused the memo of appeal and the order dated 11.6.1997 of the Motor Accident Claims Tribunal, Jaipur City, Jaipur in Misc. Case No. 05/1994. Under this order the application filed by the claimant appellants under Order 9 Rule 9 of the CPC for restoration of claim petition, which was dismissed for non-prosecution, has been rejected.

2. The facts of the case in brief are that the claimant appellants filed the claim petition before the Motor Accident Claims Tribunal, Jaipur City, Jaipur for compensation on account of death of Mr. Beni Prasad in a motor accident which occurred on 3.12.1984. The claim petition was filed by the claimant appellants in the Tribunal through Advocates Mr. R.C. Chouhan and Mr. A.K. Saxena. Later on the claimant appellants engaged Mr. Ashok Kumar Bairwa, Advocate to conduct

their claim petition.

3. The claimant appellants filed an application before the Tribunal and therein the prayer is made that they are unable to attend every date fixed in the claim petition and they may be exempted from appearing in person, on every date of hearing and their Counsel, may be allowed to appear on every date. The Counsel engaged by the claimant appellants assured them also that they are not required to come in the Court on every date. As and when their presence is required they will be accordingly informed.

4. The claimants appellant submit that for a long time they had not received any information from their Advocate about the claim petition. Thus they enquired about the matter and came to know that the Counsel, engaged by them in the claim petition, has expired. The claimant appellants instructed Mr. Girish Pareek, Advocate to enquire about the matter. On inquiry it came to their notice that the claim petition has already been dismissed for non-prosecution. The claimant appellants instructed Mr. Girish Pareek to file an application for restoration thereof. The notice of this application filed by the claimant appellants for restoration of the claim petition were issued to the respondents. Under impugned order dated 11.6.1997 that application was came to be rejected, hence this appeal.

5. On 7.12.1990 the claim petition was dismissed for non-prosecution. The order made by the Tribunal on 7.12.1990 is reproduced in the impugned order. From the perusal thereof it comes that on that date the Counsel for the claimant appellants was, not present. It further reveals that on the date, preceding to that date, the Counsel was also not present. The matter was called and as nobody has put appearance for the claimants, the same was dismissed for non-prosecution at 3.13. p.m.

6. Having gone through the order of the learned Tribunal, it pains to observe and state that it has adopted wholly perverse approach in the matter. The learned Tribunal has accepted in principle that in the matter of the restoration of the Motor Accident Claims case dismissed in default, the Tribunals have to adopt sympathetic view and approach, but while deciding of the matter it has totally shown disregard to this well settled and accepted proposition of law.

7. The Tribunal has not considered that the appellants are a widow and minor son and daughter of the deceased. The appellants looking to their difficulties have filed an application before the Tribunal and prayed therein that they may be exempted from their personal appearance on each and every date. The Tribunal has unnecessarily given much emphasis on the fact that the claim petition has been presented by the appellant No. 1 in person, but it has totally ignored this aspect that they have filed an application for exemption of their personal appearance. Each and every date of hearing in the Tribunal, the presence of the claimants is not necessary. Their presence is necessary for recording their oral statements. It is most unfortunate that despite of engaging three Advocates the poor claimants are suffered to the extent that their claim petition ultimately has been dismissed for non-prosecution. Anybody is to be blamed all those Advocates are to be blamed, but unfortunate for the claimants the learned Tribunal has adopted a wholly perverted, unwarranted and uncalled for approach in the matter. It is high time where the Tribunal is to go with an approach to do substantial justice. Not only it is to adopt but it is expected from it to adopt, a justice-oriented approach in such matters. But the Tribunal in this case has acted contrary to what it is expected from it in the matter

8. The Parliament has amended the Motor Vehicles Act, 1988. There is no limitation now as per the amended provisions of the Motor Vehicles Act, 1988 for filing of the motor accident claim petition. From this legislation change brought in the Motor Vehicles Act, 1988 clearly indicates the intent, purpose and desire of the Parliament. This provision in the Motor Vehicles Act for awarding compensation for the injury or death of person in a motor accident to himself or dependent claimants is a beneficial piece of legislation. The object and purpose of enacting thereof is very obvious a socio-economic legislation. Not only this the Parliament has gone to the extent of making compulsory third party insurance for the motor vehicles. This act of Parliament further fortifies its intention, desire and object to provide a provision where these poor claimants, the dependents of the deceased or injured himself get the compensation without any problem or difficulty. The learned Tribunal has ignored all these aspects of the matter and having totally a conservative approach decided this application of claimants, I find sufficient justification for the absence of the claimants in the claim petition. The learned

Tribunal has not disbelieved the case of the appellants that they filed an application for exemption from their personal appearance, second Advocate has been engaged, the Advocate has been engaged, the Advocate has assured them that their presence is not necessary on each and every date and lastly he further assured that as and when their presence is necessary accordingly, he will inform.

9. In these facts and circumstances, it is wholly perverse approach of the Tribunal that the appellants were not remained present in person for many dates, which shows that they are not interested in the matter. Why they will not be interested in the matter? They lost their only bread-winner in the motor accident. They would have their only source of income the amount of compensation awarded by the Tribunal in this case. The explanation for this delay made in filing of the application in the facts and circumstances, of this case is in-built therein. In case this order is allowed to stand, it will certainly result in causing injustice to the claimant appellants. This approach of the Tribunal that all the Advocates have not withdrawn their 'Vakalatnama' is wholly perverse. It is not be unknown to the Tribunal the parties change their Advocate. This change is made by taking the consent of the Advocate who has already filed in the 'Vakalatnama' for that party. In most of the cases the 'Vakalatnama' are not withdrawn by the Advocates. These two other Advocates who were engaged by the claimants appellants did not appear and another Advocate engaged by the claimant who has unfortunately expired. It is a very hard and unfortunate case. But unfortunately the Tribunal has instead of appreciating the realities and difficulties of this class of litigants and facts of the case adopting a conservative approach non-suited these poor claimant appellants once for all.

10. As a result of aforesaid discussions, this appeal succeeds and the same is allowed. The order dated 11.6.1997 of the Motor Accident Claims Tribunal, Jaipur City, Jaipur in Misc. Case No. 05/1994 is quashed and set aside. The application filed by the claimant appellants under Order 9 Rule 9 of the CPC is granted. The order dated 7.12.1990 passed in Claim Petition No. 28/85 is recalled and the claim petition is restored to its original number. The claim petition is of the year of 1985. The learned Tribunal is directed to decide the same within a period of six months from date of receipt of the certified copy of this order. The parties are directed to

remain present in person or through Advocate on 26.8.2002 before the Tribunal. In the facts of this case no order as to costs.

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