

Roopa Sharma Vs. Manoj Kumar Gupta and ors

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Court : Delhi

Decided On : Apr-18-2013

Judge : Suresh Kait

Appellant : Roopa Sharma

Respondent : Manoj Kumar Gupta and ors

Judgement :

\$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

18. h April, 2013 + MAC.APP. 891/2011 & CM. NO. 18539/2011 ROOPA SHARMA Appellant Through: Mr. Amit Kr. Pandey, Ad. versus MANOJ KUMAR GUPTA & ORS Respondents Through: Mr. Suresh Sharma, Adv. for R1. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Instant appeal has been preferred against the impugned judgment dated 21.03.2011 whereby, Id. Tribunal has dismissed the claim petition filed by the appellant.

2. Ld. Tribunal has passed the aforementioned order on recording that appellant was partially cross-examined, thereafter, she did not tender herself for further cross-examination in spite of the directions of the court. Even on request of the mother of the appellant, the matter was adjourned for completing the evidence, however, in spite of that she did not appear.

3. The evidence of the appellant was closed on 11.08.2009. The appellant neither move any application nor made herself available for crossexamination before the Id. Tribunal.

4. Finally, the Id. Tribunal recorded its findings vide impugned order dated 21.03.2011 by dismissing the claim petition that the appellant did not subject herself for cross-examination in spite of the order of the court. Therefore, her testimony cannot be read as evidence. Id. Tribunal has also recorded that respondent no. 1 / driver of the offending vehicle was acquitted of the offences punishable under Sections 279/338 IPC as the certified copy of the judgment was produced by the respondents.

5. The Id. Tribunal further recorded that the appellant suffered injuries, however, failed to prove that the said injuries were caused due to the accident in question caused by rash and negligent driving of the offending vehicle by respondent no.

1. The appellant also failed to prove the loss of earning due to the disability sustained in the accident.

6. The appellant has filed present appeal along with an application for condonation of delay being CM. No.18540/2011, wherein it is stated that the appellant tendered her evidence by way of affidavit before the Id. Tribunal and her statement was recorded on 24.02.2005. Thereafter the matter was adjourned for cross-examination by the Id. Counsels for respondent no. 1 and 2.

7. Thereafter, the appellant appeared before the court on 26.07.2005 and 30.11.2005, but the counsels for respondent nos. 1 & 2 did not crossexamine the appellant even on the aforesaid dates 8. It is further stated that the appellant again appeared before the Id. Tribunal on 28.11.2008 and 27.01.2009. She was partly cross-examined by the counsels for the respondents and her cross-examination was deferred for the next date of hearing. Her evidence was closed by the Id. Tribunal vide order dated 11.08.2009 as she could not appear on the said date.

9. It is further stated that the counsel for the appellant neither advised the appellant for filing of an application for recalling of the order dated 11.08.2009 nor

took any proper steps to save the interest of the appellant. However, the appellant and her mother appeared before the court as and when their counsel advised them.

10. Counsel for the appellant submits that due to the non-appearance of her counsel, the claim petition was dismissed on 11.10.2010 in default, which was restored vide order dated 26.02.2011 on moving an application for restoration. But the counsel for the appellant did not choose to take proper steps to save the interest of the appellant before Id. Tribunal even after restoration of the petition.

11. Id. Counsel appearing on behalf of the appellant has argued that the claim petition filed by the appellant before the Id. Tribunal was under the welfare legislation and if the proper steps have not been taken by the counsel for the appellant, then she should not make to suffer from her legitimate rights, which are available under the Motor Vehicles Act.

12. He further submitted that as per the disability certificate, she has suffered 50% permanent hearing disability, which was caused due to the accident in question. The medical bills have been filed by the appellant before the Id. Tribunal. However, due to the reasons mentioned above, she could not prove the same, therefore, Id. Tribunal dismissed the claim petition and not awarded even a single penny as compensation in favour of the appellant.

13. Id. Counsel appearing on behalf of the respondents (owner and driver of the offending vehicle in question) submitted that the Id. Tribunal granted number of opportunities to the appellant to complete her evidence, however, she did not make herself available. Having no option, Id. Tribunal had closed the evidence of the appellant and dismissed the claim petition filed by her.

14. Id. Counsel has further submitted that there is delay in filing the present appeal, which has not been properly explained. He has drawn the attention of this court towards the affidavit filed in support of the application seeking condonation of delay, which cannot be taken into considerations for the reasons that the same has not been filed in this case, but in some other case as the title shown in the said affidavit as Ms. Surinder Kaur v. Oriental Insurance Co. Ltd., whereas the title

of the present case is Roopa Sharma v. Manoj Kumar Gupta and Ors. Therefore, the present appeal is not maintainable and may be dismissed on the ground of delay alone.

15. After hearing Id. Counsel for the parties, it is emerged undisputedly that the appellant changed 4-5 counsels during the pendency of the claim petition before the Id. Tribunal. This may be because of her non-satisfaction regarding the progress of the case or due to some other reasons, which this court can only presume. Since nothing has come on record, therefore, I am not going to make any opinion for what reasons she did not make herself available to complete her evidence before the Id. Tribunal. There may be some communication gap between the counsels and the appellant. Even the present appeal has been filed along with an application for condonation of delay, which is not legally proper.

16. Having recorded the above observations, still I am of the opinion that the present claim petition has been filed by the appellant under the welfare legislation as she has suffered 50% permanent hearing disability due to the accident in question. In support of her case, she filed medical bills along with the claim petition, she was available on various dates, however, evidence was deferred till 2009. It is evident from the order sheets of the trial court that four-five advocates have been changed in between. May be due to communication gap between the appellant and her counsels, she could not make herself available as and when called by the court.

17. In view of the above, on the issue of delay, I have no hesitation to say that the present era of computer is of cut and paste, therefore, in the affidavit filed along with the application for condonation of delay, the title has been wrongly pasted, whereas the affidavit has been sworn by the appellant i.e. Roopa Sharma. The present application cannot be rejected on a technical ground for the reasons that the present case falls under welfare legislation.

18. In view of the above discussion, while condoning the delay, impugned order dated 21.03.2011 is set aside.

19. Let her complete the evidence as per the convenience of the Id. Tribunal.

20. Parties are directed to appear before the Id. Tribunal on 03.05.2013 for direction.

21. Appeal is allowed on the above terms with no orders as to costs. CM. NO. 18540/2011 In view of the above, instant application has become infructuous and disposed of as such. TCR be sent back along with a copy of this order. SURESH KAIT, J APRIL 18 2013 Jg

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