

(2006) 11 AHC CK 0243
In the Allahabad High Court

Ajai Kumar

APPELLANT

Vs

Motor Accident Claims Tribunal, Special Judge (E.C. Act),
National Insurance Company Limited and Shri Dinesh Kumar
Gautam

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Citation : (2006) 10 ADJ 754 : (2007) 2 AWC 1749

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Ms. Pratima Srivastava, learned Counsel for the petitioner and Sri K.K.Misra, holding brief for Sri N.K. Srivastava, learned Counsel appearing for the National Insurance Company Limited, respondent No. 2.

2. The petitioner has assailed the two orders passed by the Motor Accident Claims Tribunal, Moradabad, one dated 1.10.2002 dismissing his claim petition in default and the subsequent order dated 3.3.2003 rejecting the application for recall of the order dated 1.10.2002.

3. Learned Counsel for the petitioner has submitted that the Tribunal has excluded from consideration the submissions made in the application for recall of the order dated 1.10.2002 and the compelling circumstances under which the petitioner could not pursue his case before the Tribunal. As per petitioner, there was no element of wilful or deliberate avoidance in pursuing the case before the Tribunal. Several circumstances, which were enumerated in the application, were highlighted before the Tribunal showing sufficient reasons to recall the order but they were not taken into consideration. The Tribunal ought to have restored the claim petition and heard it on merits. Learned Counsel for the petitioner has placed reliance on a judgment of this Court as reported in 2003(2) TCC 769

United India Insurance Co. Ltd. v. Additional District and Sessions Judge, Muzaffarnagar and Ors., in support of her submissions.

4. Learned Counsel for United India Insurance Company Limited has also put forth his version before the Court.

5. After hearing the learned Counsel for the parties and perusing the record, this Court is of the opinion that the Tribunal has failed to consider the entire facts and evidence on record. There was substance in the submissions made before the Tribunal. This fact cannot be ignored that the petitioner was injured in an accident, which took place near village Mangupura on Moradabad-Gajraula road. The claim petition was dismissed as the petitioner could not pursue the matter on the date fixed for sufficient reasons. His application for recall has been dismissed without appreciating the material on record and a too technical view of the matter has been taken by the learned Tribunal while disposing of the application for recall of the order. The petitioner's case is squarely covered by the afore-mentioned judgment cited by the learned Counsel for the petitioner. It would be relevant to quote para 9 of the said judgment, wherein this Court has observed as under:

9. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, the Supreme Court allowed the appeal, set aside the orders of Tribunal, which held that Tribunal does not have powers to review its orders except to correct any error in calculating the amounts. The Allahabad High Court had dismissed the writ petition stating that it is a question of fact for which writ petition is the appropriate remedy. The Supreme Court allowing applications filed under Sections 151, 152 and 153, C.P.C., praying for recall of orders on the ground of revelations of new facts that injuries were not suffered due to accident, held in para 16 as follows:

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

6. Therefore, I am of the view that it will be highly unjust and unfair if a claim which is prima facie found to be valid for consideration by the Tribunal is dismissed in default and the restoration application is also rejected on technical or hyper-technical grounds. The Tribunal, while dealing with such matters should not take such a technical view to deny justice to an injured party, vide judgments of Apex Court as reported in Shakuntala Devi Jain Vs. Kuntal Kumari and Others, The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, and N. Balakrishnan Vs. M. Krishnamurthy,

7. In view of above, the writ petition is allowed and the judgment and orders dated 1.10.2002 and 3.3.2003 passed by the Motor Accident Claims Tribunal,

Moradabad, contained respectively in Annexures 2 and 3 to the petition are quashed. The Tribunal shall reopen the proceedings, hear the case on merits and conclude the controversy expeditiously.