

(2008) 04 GUJ CK 0078
In the Gujarat High Court
Case No : Spl. C.A. No. 9098 of 2002

Aktharbibi Abdul Razak Gulam Rasul and Others APPELLANT
Vs
United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Succession Act, 1925 — Section 214(1)

Citation : (2009) ACJ 1823 : AIR 2008 Guj 146

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Amita M. Shah, for the Appellant; Madhu Barot, for Avani S. Mehta, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard Ms. Amita M. Shah, learned Counsel appearing for the petitioner and Mr. Madhu Barot for Ms. Avani S. Mehta, learned Counsel for the respondent.

2. The petitioner by invoking jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, has prayed to issue appropriate writ, order or direction to the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar, mainly in the following terms:

(A) Your Lordships may be pleased to hold and declare that the succession certificate is not required in the present case and the petitioners are entitled to the disbursement of the amount towards the compensation which came to be deposited by the respondent Insurance Company before the M.A.C. Tribunal, Himmatnagar, District Sabarkantha on 19-9-2001 and accordingly, your Lordships be pleased to pass the appropriate orders for disbursement of the claim amount of deceased Shri Bhurabhai to his heirs and legal representatives who are the petitioners herein.

(B) Your Lordships may further be pleased to hold and declare that the provisions of Section 214(1)(b) of the Indian Succession Act, 1925 would not apply in the present case and accordingly, your Lordships may be pleased to set aside the order passed below Exh. 1 in M.A.C. Petition No. 401 of 1991 dated 7-1-2002 passed by the M.A.C. Tribunal at Himmatnagar, District-Sabarkantha.

3. It is the say of the petitioner that the learned Tribunal has erroneously directed the heirs of the deceased to produce succession certificate to get amount disbursed in their favour as the original claimant has died natural death.

4. Original claimant Abdul Razak Gulam Rasul Bhurawala had sustained grave injuries in a vehicular accident and, therefore, he had moved the M.A.C. Tribunal, Sabarkantha at Himmatnagar for compensation. Ultimately, the said original claimant succeeded in the claim petition and the Tribunal awarded amount of Rs. 3,48,020/- with cost and interest. Consequently, the Insurance Company deposited amount of Rs. 7,72,741/- with the Tribunal. However, before the original claimant Abdul Razak Gulam Rasul Bhurawala could realize the amount, he died natural death. When the heirs of the deceased claimant applied for disbursement of the amount, they were asked to produce succession certificate.

5. It is rightly submitted by learned Counsel for the petitioners, that in view of the observations made by this Court in Civil Revision Application No. 1074/99, dated 29th March, 2000 (Coram: D.P. Buch, J.), the Tribunal ought not to have insisted for production of succession certificate as the same is otherwise not required. Of course, in the above cited decision, Mr. P.V. Nanavati, learned Counsel for the Insurance Company had expressed his no objection and therefore only, it appears that the Court had decided to pass orders. However, this Court is supposed to read the entire order passed.

6. Clear answer available is erroneous insistence of the Tribunal. For example, if the Insurance Company would not have deposited the entire sum along with interest with the Tribunal or some less amount would have been deposited, whether, within 90 days, heirs of the deceased could have filed any execution petition for recovery of the remaining amount or entire sum. The answer would obviously be in affirmative. In such situation, the persons who are otherwise entitled to get order executed, if approach the Court for disbursement of the amount and when there is no resistance from the Insurance Company, which can be said to be formal resistance sustainable in the eye of law, the Tribunal should take liberal view in the matter, especially when one decision of this Court is available for consideration and as guiding factor.

7. The observations made by the Apex Court in the case of Smt. Rakhsana (Smt.) and Ors. v. Nazrunnisa (Smt.) and Anr. reported in 2000 AIR SCW 4941, would help the petitioner. Of course, the facts of the decision were materially different. In the said case, the Supreme Court has held that the succession certificate as envisaged under the Indian Succession Act was only granted in respect of "debts" or "securities" to which the deceased was entitled and the

compensation awarded under the Motor Vehicles Act was not a debt nor a succession. Therefore, certificate was required to be obtained in order to claim the compensation awarded under the Motor Vehicles Act. Similar view has been taken in case of Resilikutty Chacko and Others Vs. State of Kerala, Kerala High Court was dealing with the amount of compensation deposited under the Land Acquisition Act.

8. In view of the above, the petition requires to be and is hereby allowed. It is hereby ordered that M.A.C. Tribunal, Sabarkantha at Himmatnagar, now shall disburse the amount of compensation deposited by the respondent Insurance Company on 19-9-2001. However, it is clarified that it would be open for the Tribunal to make appropriate disbursement if there are any disputes amongst the heirs qua quantum of compensation payable to each of the heirs. I have also considered that till date, no third party has raised any claim to the amount deposited by the Insurance Company with the Tribunal. Rule is made absolute with no order as to costs. Copy of the writ of this order be sent to the lower Court forthwith. Direct service permitted.