

(2001) 08 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 639 of 2001

Ganiba and Another	Vs	APPELLANT
Motor Accident Claims Tribunal and Others		RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 12

Citation : (2003) 3 RCR(Civil) 163

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Anil Jain, for the Appellant; A.S. Narang, for the Respondent

Final Decision : Allowed

Judgement

Keshote, J.—Having gone through the order of the Motor Accident Claims Tribunal, Dholpur I am satisfied that respondent No. 2 is only the contesting party.

2. Admit. Respondent No. 2 is represented by the Advocate. The matter is complete. The matter is taken up for hearing.

3. Heard learned counsel for the parties.

4. The challenge has been made by the petitioner by this petition Under Article 227 of the Constitution to the order of the Motor Accident Claims Tribunal, Dholpur dated 16.9.2000 (Annexure-3).

5. The facts of the case are that petitioner filed claim petition along with his daughter Pinky against respondent Nos. 2, 3 & 4 who are the insurer and owner of the offending vehicle which was involved in the accident. The petitioners stated in their claim petition that when they are travelling in the offending bus the driver of it was driving the same rashly and negligently and as a result of which near village Soha the bus was met with an accident in which petitioners

and his daughter Pinky sustained grievous injuries. During the pendency of this claim petition, the daughter of the petitioner-Kumari Pinky, one of the claimants died on 7.12.1999 as a result of the injuries sustained by her in the accident. The petitioners filed an application Under Order 23 R.3 CPC. The copy of this application is there on record of this petition as Annexure-2. In this application the prayer has been made that the petitioners may be permitted to withdraw the claim application of deceased-Kumari Pinky and to grant the permission to them to file fresh claim petition for the compensation due to her death. This application was came to be decided by the Motor Accident Claims Tribunal under the impugned order.

6. This application was opposed only by the counsel for the United India Insurance Company Ltd. It is submitted before the Tribunal by the learned counsel who appeared for the Company that he has no objection to the extend prayer made by the petitioner in the application for withdrawal of the same to the extent it relates to claim of deceased-Pinky. However, so far second prayer is made, the objection is raised by the Company's counsel that the petitioners have not produced any evidence to show and establish that the death of Pinky was caused due to injuries which she sustained in the accident.

7. The Motor Accident Claims Tribunal has gone on the merits of this contention raised by the counsel for the Company and though the first part of the prayer in the application is granted but so far as the second prayer is concerned the same has been declined. The Tribunal has gone on the merits of the matter and held that as there is no evidence that death of deceased-Pinky has caused due to the injuries sustained by her prayer to file claim petition by the petitioner cannot be granted.

8. Having heard learned counsel for the parties, I am satisfied that this approach of the Motor Accident Claims Tribunal is wholly perverse. At the stage of considering the application filed by the petitioner for permission to file claim petition by them for the compensation for the death of their daughter Pinky in the motor accident as a result of injuries sustained by her in the accident, the Tribunal is under any legal obligation to go on the merits of the claim. In fact the petitioners were not properly advised. They being the parents of deceased daughter Pinky have all the right to file the claim petition on her death. That claim petition was maintainable and could not be dismissed at that stage on the ground of not producing any evidence that her death was caused due to injuries sustained by her in the accident. It is a matter of the trial of the claim petition. In case ultimately the claimant are not proved their case there may be some semblance of justification with the Tribunal to reject the claim petition on merits. But at this stage more so when the petitioner have a right to file such a petition without resorting to the provisions of Order 23 Rule 3 CPC this application should not have been rejected. It is a case where the Motor Accident Claims Tribunal has not considered socio economic aspect of this provision as well as the fact that the petitioners have independent right to file the claim application. The approach of

the Motor Accident Claims Tribunal in this matter is contrary to the basic conception, purpose and object for which this provision has been enacted in the Motor Vehicles Act. It is a case where the Motor Accident Claims Tribunal has not considered substance of the matter and has taken a hyper technical approach. Not only this the Motor Accident Claims Tribunal has decided the application on the ground which otherwise was not available at that stage. This is a case where in case the order of the Motor Accident Claims Tribunal impugned in the petition is allowed to stand it will result in causing injury and prejudice to the petitioners. In case this perverse order of the Tribunal is allowed to stand it will result in failure of justice to the petitioners. It is a different matter whether on merits ultimately the petitioners succeed or not in the matter but the consideration which prevail with the Tribunal and what the Tribunal expected to be proved at this stage by the petitioners is wholly a perverse and arbitrary approach. The order of the Motor Accident Claims Tribunal is also not in consonance with justice oriented approach.

9. As a result of the aforesaid discussion, this petition succeeds and the same is allowed. The order dated 16.9.2000 is quashed and set aside. The petitioners are permitted to file claim application for the compensation for the death of their daughter Pinky. However, it is made clear that this decision may not be taken as if this Court has accepted the case of the petitioners that death of their daughter Pinky has been caused due to the injuries which she sustained in the accident. It is a matter of the trial and it has to be gone into and decided in the claim petition if any filed by the petitioners for the compensation for the death of their daughter Pinky.

10. It is a case where the United India Insurance Company which is a State within the meaning of Article 12 of the Constitution has not come up with all the fairness before the Tribunal, In this case perverse, uncalled for and undesirable objections have been put by it - before the Motor Accident Claims Tribunal, It is unfortunate that before raising such a perverse, baseless, uncalled for and unjustified objection by the Insurance Company it has not examined the matter in its legal cell. It cannot be gain say that the petitioners had a right to file a claim petition for the death of their daughter Pinky. In this case the petitioners were not properly advised and they filed the application Under Order 23 Rule 3 CPC. This provision is not relevant in this case. Kumari Pinky was one of the claimants in original claim petition. She claimed the compensation in the claim application for the injuries which she sustained. After her death the petitioners have their own right to claim the compensation for the death of their daughter as a result of alleged injuries sustained by her in the accident. This aspect of the matter was not looked into by the counsel for the Company appearing before the Tribunal. In case he would have properly assisted the Tribunal this order would not have been there. It is expected from the counsel of the Insurance Company to assist the Tribunals properly rather than to adopt course to get a decision by raising perverse & baseless objections. But for these frivolous, baseless, unjustified and undesirable objections raised by the Company these poor persons

are not to come to this Court. The litigation heavily costs. Learned counsel for the petitioners submits that he has charged Rs. 1,100/- as fees from the petitioners to provide his services to them in the matter. He further submitted that he charged Rs. 2,000/- towards the amount of expenses stated to be incurred in filing of this petition. So far fees part is concerned in these days of high price of essential commodities and the commodities needs for the basic life it is not unreasonable. Otherwise, also under the Advocates Act or rule framed thereunder the scale of the fees which are to be charged by the Advocates in a given case is not fixed. So the counsel for the petitioners is not unjustified in charging Rs. 1,100/- as fees from the petitioners to render them his professional service. The awarding of the cost to the litigant does not mean only a token cost to poor person who with the great difficulty would have come up before this Court. If ultimately they succeed in the matter the awarding of token cost is nothing but only an insult to them. On the success of the litigation the litigant has to be compensated for the expenses which he incurred in filing the petition. It is a fit case where the cost is to be awarded to the petitioners against United India Insurance Company. But under the head of the expenses of filing this petition Rs. 2,000/- which has been charged by the counsel is highly excessive. In the petition the Court fees of Rs. 25 + 1 + 2 and process fees of Rs. 10/- or Rs. 5/- would have been paid. If we go by the expenses of typing this petition which is of 21 pages would not have been cost more than Rs. 500/-. Even if other expenses are also taken into consideration total costs would not have been more than Rs. 700/-. In all, circumstances this amount of Rs. 2,000/- charged by the petitioners' counsel towards the expense of filing the petition is highly excessive. In fact that much amount could not be spent and this claim to this extent cannot be accepted. The respondent-Insurance Company is directed to pay Rs. 1,100/- plus Rs. 750/- total Rs. 1,850/- as cost of the petition to the petitioners. This amount of the cost is to be paid by the Insurance Company to the petitioners personally and receipt of payment thereof to be produced in the Court.

11. Before parting with the case it is to be stated that petitioner No. 2 being the woman has a right of free legal services. Looking to the facts of this case there is all the possibility that petitioner No. 1 may not be a rich person. It also borns out from the claim application. He would have also been entitled for the free legal services. The amount of Rs. 3,100/- for the petitioners is not a small amount. In case they would have made award of their this legal right they would have saved this amount which is very valuable for them. It is a high time where the members of the Bar should take all the care to see that this programme of providing free legal services to this class of the person is proved to be effective and benefits are reached to the hands of the real beneficiaries thereof. It is a different matter that despite making known them of their this right of free legal aid to the litigation he or she still does not want to avail of the same. But where after knowing of their this legal right they want to avail of same, they are to be directed to approach to the concerned free legal service committees. There some

device is to be found out so that this message of the right of free legal services reach to the peoples.