

(2023) 07 GUJ CK 0041
In the Gujarat High Court
Case No : R/First Appeal No. 334 Of 2020

Kaliben Somabhai Damor

APPELLANT

Vs

Iliyas Umar Farooq Guniya

RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Gujarat Motor Vehicles Rules, 1989 — Rule 211, 229
Code Of Civil Procedure, 1908 — Section 115, Order 9 Rule 4

Citation : (2023) 07 GUJ CK 0041

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Vishal P Thakker, GC Mazmudar,, HG Mazmudar

Final Decision : Disposed Of

Judgement

Gita Gopi, J

1. Heard Mr. Thakker, learned advocate for the appellant and Mr. Mazmudar, learned advocate for the respondent no.3.

2. Challenge is given to the dismissal order passed in MACP No.1915/01 dated 7.9.2017 by the MACT (Aux), Panchamaharaj at Godhra. The learned Tribunal observed that the petitioner has never produced any documentary evidence at the time of filing the claim petition and has not proved the genuineness of the alleged vehicular accident by entering into witness box as per Rule 211 of the Gujarat Motor Vehicles Rules or otherwise and as the alleged accident is of the year 1999, the learned Tribunal found that the parties and the learned advocates are not interested to proceed further inspite of sufficient opportunity granted to them and thus, the Tribunal found that it has no option except to dismiss the claim petition, while liberty was granted to the claimants to file the petition along with all documents afresh without being affected by the provisions of law of limitation.

3. In the case of Bharatbhai Narsinghbhai Chaudhary & Ors. v. Malek Rafik Malek

Himmatbhai, reported in 2011 (2) GLR 1324, the Court has observed that the Tribunal has no power to dismiss the claim petition for default. It would thus be necessary upon the Tribunal to issue a notice to the claimants and the Advocates appearing on record after framing of the issues for providing the Affidavit in the form of examination-in-chief supported by the documents.

4. It is necessary to reproduce relevant part of the decision in the case of Bharatbhai Narsinghbhai Chaudhary (supra) which is as under:-

"A District Judge, who functions as a Claims Tribunal, is not only within the administrative control of the High Court, but also subordinate to it under Section 115 of the Code. A Claims Tribunal is a 'Court' although with limited jurisdiction and not a mere 'Tribunal'. The powers of appeal given to the High Court under the Act against the decision of the Tribunal constituted under the Act, will definitely lead to conclusion that the said Tribunal is subordinate to the High Court and the nomenclature given to the Motor Vehicles Tribunal that, it is a Tribunal, will not take it out of the purview of the Civil Court. (Para 5)

Under Rule 3, therefore, even if, neither party appears when the suit is called for hearing, it is not compulsory for the Court to dismiss the suit. The Court may adjourn the suit. In the event of dismissal of the suit, it is open to the plaintiff to apply for restoration of the suit and the Court may set aside the order of dismissal and restore the suit. An order dismissing a suit for default of appearance of parties is not a "decree" under Sec. 2(2), and hence, is not appealable. An order of dismissal of a suit based on erroneous application of Rule 3 can be said to be a "case decided" within the meaning of Sec. 115 of the Code. Hence, where the Court has acted with illegality or with material irregularity in the exercise of jurisdiction, a revision would lie against such an order. (Para 5.7)

The provisions of the Code are applicable to govern the procedure in a Motor Accident Claim case as provided under Rule 229 of the Gujarat Motor Vehicles Rules, 1989. There is no separate procedural law, made applicable to conduct the Motor Accident Claim petitions. Therefore, application for restoration, made under Order 9, Rule 4, in the instant case, is absolute, legal and sustainable, and therefore, the revision, arisen out of such order, passed below such application, is also undoubtedly maintainable. (Para 5.11)

On perusal of the application and other relevant papers, it appears that the restoration application was filed by the applicants on 22nd November, 2001 and another restoration application is filed on 28 th January, 2004, under Order 9, Rule 4 of the Code, wherein, the applicants have described the reasons and tried to justify their case for restoration of the application. On perusal of the papers, it appears that the applicants are poor persons and coming from the lower strata of the society as they belong to Tribal community. Therefore, instead of entering into the technicalities and with a view to do the substantial justice, the Court below was required to adopt lenient view. (Para 6)."

5. The Tribunal could have taken an extra effort to inform the applicant, who was

aged about 18 years at the time of filing of the claim petition, that, the matter was ready for adducing the evidence and further it is also required to be noted that the opponents though appeared had never submitted their written statement and the rights came to be closed on 30.1.2016 and thus, there was no substantial defence raised by the respondent to the claim of the petitioner and when now the learned Tribunal has granted an opportunity to file a fresh without being affected by the law of limitation, the order of dismissal dated 7.9.2017 passed in MACP no.1915/01 is quashed and set aside. MACP no.1915/01 is ordered to be restored on the file of the Tribunal. Parties be provided sufficient opportunity to produce the evidence.

6. While condoning the delay in Civil Application no. 1010/19, it was ordered that the applicant shall not be entitled to the interest for the period of delay. The learned Tribunal thus while considering the claim petition would keep in mind the order passed in Civil Application no.1010/19 on 21.1.2020 where the delay of 429 days was condoned on the condition that the applicant shall not be entitled for interest for those period. Additionally the claimants as well as the insurance Company are granted the opportunity to raise their plea and reagitate regarding the payment of interest on compensation amount if at all granted from the date of application till the dismissal of the petition and the learned Tribunal shall decide the said issue in accordance with law. The Tribunal to issue fresh notice to the claimants as well as the insurance Company prior to recording of evidence and the exercise of concluding the matter be conducted within a period of six months on receipt of the writ of this order.

7. Accordingly, the appeal stands disposed of.