
(2023) 04 GUJ CK 0109
In the Gujarat High Court
Case No : R/First Appeal No. 1831 Of 2023

Kiranbhai Pravinbhai Parmar

APPELLANT

Vs

Rajuram Daluram

RESPONDENT

Date of Decision : 27-04-2023

Acts Referred:

Gujarat Motor Vehicles Rules, 1989 — Rule 3, 4, 229
Code Of Civil Procedure, 1908 — Section 2(2), 115

Citation : (2023) 04 GUJ CK 0109

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Yogendra Thakore

Final Decision : Disposed Of

Judgement

Gita Gopi, J

1. Mr. Yogendra Thakore, learned advocate for the appellant stated that MACP was filed by 19 years old young boy who was pursuing his education and was also earning by doing labour work. His matter being MACP no.292/12 has been dismissed by the MACT, Mehsana on 2.4.2018 on the ground that the applicant could not serve opponents no.1 and 2 and thus, came to the conclusion that since opponents no.1 and 2 have remain unserved, the liability cannot be laid down on the insurance Company, which is opponent no.3.

2. Advocate Mr. Thakore submitted that another MACP 290/12 was instituted on the same day i.e. on 12.6.2012 and in MACP no.290/12, the proceedings against the said opponents no.1 and 2 were conducted ex-parte and judgment was delivered on 28.6.2021 making the insurance Company liable to pay the compensation. Mr. Thakore submitted that had both the matters be conducted together, the applicant may not have faced these consequences. Mr. Thakore submitted that in case the applicant who is still pursuing his studies, would not be in a position to get the notice served at Rajasthan, rather Mr. Thakore

submitted that before dismissing the matter, it ought to have instructed to the applicant to serve it by way of official gazette.

3. Taking into consideration the decision in the case of Bharatbhai Narsinghbhai Chaudhary & Ors. v. Malek Rafik Malek Himmatbhai, reported in 2011 (2) GLR 1324, Mr. Thakore submitted that no case under MACP could be disposed of without deciding the matter on merits. Mr. Thakore further submitted that the learned Tribunal ought to have kept in mind the judgment in the case of Jai Prakash v. National Insurance Company Limited, reported in (2010) 2 SCC 607 and should have asked the Investigating Officer to have served opponents no.1 and 2 who are driver and owner of the vehicle residing at Rajasthan.

4. In the of Bharatbhai Narsinghbhai Chaudhary (supra), the Court has observed that the Tribunal has no power to dismiss the claim petition for default.

5. 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 28th 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)."

6. Here in this case, the learned Tribunal which is the main Court is rather having greater responsibility than other Auxiliary Tribunals, where with powers at its command can get the opponents served on its own by exercising little proactive steps to ensure that the matter gets decided only on merits. Every litigant expects which is a reasonable expectation for their matter being decided on merits and not merely dispose of and thus, has laid down in the case of Bharatbhai Narsinghbhai Chaudhary (supra), the case under MACP are required to be decided on merits. Hence, the impugned judgment and order is quashed and set aside with a direction that the learned Tribunal may get the service of opponents no.1 and 2 by way of Official Gazette or may take any other appropriate steps to get the process served and decide the case on merits. MACP is restored on its file. Let the exercise of considering the matter be completed within a period of six months.

7. Accordingly, the present appeal stands disposed of.