
(2012) 11 GAU CK 0048
In the Gauhati High Court
Case No : MAC App. 76 of 2012

Namita Goswami and Others

APPELLANT

Vs

Hiralal Debnath

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 166, 169, 169(2)

Citation : (2013) 2 GLT 297

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : S. Bhattacharjee, for the Appellant; Somik Deb, for the Respondent

Final Decision : Allowed

Judgement

Utpalendu Bikas Saha, J.—The instant appeal is preferred against the order dated 16.09.2010 passed by the learned Member, Motor Accident Claims Tribunal, Court No. 4, West Tripura, Agartala in TS (MAC) 505/2006 whereby and whereunder the learned Tribunal dismissed the claim petition of the appellant. Heard Mr. S. Bhattacharjee, learned counsel for the appellants as well as Mr. Somik Deb, learned counsel for the respondent, at this admission stage.

2. Mr. Bhattacharjee, learned counsel for the appellants while urging for setting aside the order of the learned Tribunal, as impugned, would contend that the learned Tribunal committed error and also acted beyond his jurisdiction while passing the impugned order. He further submits that the learned tribunal dismissed the claim petition on the ground of nonappearance of the claimant petitioner with some observation on merit which is not permissible. He again submits that the Motor Vehicles Act, 1988 (for short, "Act, 1988") is enacted by the Legislature to provide certain benefits to the person who has sustained injury in a vehicular accident and the legislature considering all aspects did not prescribe any provision for dismissing a claim petition on the ground of mere non-

appearance of the claimants before the Tribunal as that would frustrate the entire scheme of the Act, 1988. He also urges that before dismissing a claim petition on the ground of mere non attendance of the claimants the Tribunal should have exercised its powers vested in it under sub-section (2) of Section 169 of the Act, 1988. In the instant case, before dismissing the claim petition on default the learned Tribunal did not make any attempt for securing the attendance either of the claimants or of their witnesses for deciding the issue, as in question, he contended.

3. Mr. Deb while resisting the contention of Mr. Bhattacharjee would contend that though the Legislature did not enact any provision under the Act like Order IX Rule 8 of CPC (for short, "Code") but the Tribunal has inherent power to take the benefit of the provisions of the Code as according to sub-section (2) of Section 169 of the Act, 1988, the Claims Tribunal has all the powers of a Civil Court and the Claims Tribunal is also to be treated as a Civil court. He again submits that if the claimants fail to appear continuously then there will be no other option before the Tribunal except to dismiss the matter for default.

4. Admittedly, the learned Tribunal without taking any steps for securing the attendance of the claimants and their witnesses decided the claim petition on merit and decided the same in absence of the claimants. It would be proper on the part of this Court to reproduce the operative part of the order impugned, which is as follows:-

On perusal of the case record it is found that in spite of allowing sufficient time to the claimants, they had failed to adduce evidence in support of their claim and thereby the documents intended to be proved by them left unexhibited. In absence of any oral or documentary evidence on record, it can not be held that the deceased suffered death due to accident arising out of the use of motor vehicle. In this connection, I am guided to adopt the view from the decision of the Hon''ble Gauhati High Court in Rocky Dev Burman Vs. Lohit Prakash Dutta and Another, . Keeping reliance upon the ration of law laid down by the Hon''ble High Court in the above cited decision, I am of the view that the claimants have failed to prove that they are entitled to receive any compensation.

Consequently, the application u/s 166 of the Motor Vehicles Act, 1988 filed by the claimants, namely Smt. Namita Goswami, Shri Rohit Goswami and Smt. Jayeeta Goswami, stands dismissed.

Thus, the instant case is disposed of.

5. As both the learned counsel for the parties have mentioned about the provisions of sub-section (2) of Section 169 of Act, 1988 it would be proper for this Court to reproduce the same for the interest of justice. Accordingly, the same is reproduced herein under:-

169. Procedure and powers of Claims Tribunals.-

(1)

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and on enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

6. On proper scrutiny of the scheme of the Act, 1988, particularly the provisions therein, it appears that there is no specific provision in the Act like Order IX Rule 8 of the Code. At the same time, if we consider that the Tribunal has all the powers of the Civil Court then it cannot be said the tribunal has no inherent power. Even in absence of a provision like Order IX Rule 8 the Tribunal can exercise such inherent power in a given case. But in the instant case, the Tribunal admittedly did not make any attempt for enforcing the attendance of the claimants as well as the witnesses, rather decided the claim petition to the extent on merit, as the Tribunal in its order stated, that in spite of allowing sufficient time to the claimants, they had failed to adduce evidence in support of their claim and thereby the documents intended to be proved by them left unexhibited. In absence of any oral or documentary evidence on record, it can not be held that the deceased suffered death due to accident arising out of the use of motor vehicle. Before coming to such a finding the Tribunal should have gone through the accident report received from the investigating authority of the instant case.

7. In *Rocky Dev Burman Vs. Lohit Prakash Dutta and Another*, , this Court nowhere said that a claim petition seeking compensation can be dismissed on the ground of default. Rather in paragraph 5 of the said report it is specifically stated, that:

since the claim application has been dismissed on the mere ground of default and not because of the fact that the claimant had failed to prove that he was entitled to receive compensation, the real question as to whether the claimant is entitled to receive compensation still remains unresolved. The impugned order, dated 22.12.2005, aforementioned cannot, therefore, be allowed to stand good on record and must be interfered with. When the order, dated 22.12.2005, aforementioned cannot survive, subsequent order, dated 5.1.2006, passed in MAC Case No. 13 of 2004, can also not survive.

Not only that, this Court in the aforesaid case also set aside the order impugned therein and the claimant was directed to appear before the learned Tribunal for further appropriate orders.

8. There is a difference between accident and claim. Facts relating to an accident can be proved from the accident information received from the police but a claim petition cannot be decided in absence of the claimant and the witnesses as the claim has to be proved by way of evidence by the claimant. A Court is established to render justice in accordance with law, not to frustrate the same.

Thus, it would not be proper on the part of a Court or Tribunal to dismiss a claim petition on merit in absence of the claimant. Rather, it would be proper for the tribunal to make an attempt for securing the attendance of the claimants as well as their witnesses in view of the provisions of Section 169 (2) of the Act, 1988. As in the instant case, the said attempt was not made by the Tribunal and the claim petition of the claimant appellants was also dismissed for nonappearance of claimants, according to this Court, the impugned order requires to be set aside and accordingly the same is set aside.

9. The Tribunal is directed to issue proper notice to all the parties for their appearance and decide the claim petition on merit in accordance with the prescriptions of law.

10. With the above observation and direction, the instant appeal is allowed. No costs.