
(2009) 06 GAU CK 0064
In the Gauhati High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Kajal Chakraborty and Others

RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166, 168, 169

Citation : (2010) ACJ 2077 : AIR 2009 Guw 148 : (2009) 6 GLR 531 : (2009) 5 GLT 146

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The instant Civil Revision Petition is filed by the petitioner, the New India Insurance Co. Ltd. through its Branch Manager, Agartala Branch under Article 227 of the Constitution for setting aside the order dated 30-1-2009 passed by the learned Member, Motor Accident" Claims Tribunal, West Tripura, Agartala, Court No. 1 (for short "Claims Tribunal") in case No. " Civil Misc. No. 73 of 2007 passed out of TS (MAC) No. 621 of 2002 whereby and where under the learned Member, Motor Accident Claims Tribunal restored the suit No. TS (MAC) 621 of 2002 after condoning the delay of 679 days, which was dismissed for default on 23-9-2005 preferred by the petitioners, respondents herein u/s 166 of the Motor Vehicles Act, 1988 (for short, "the Act") claiming compensation due to the death of Swapn Chakraborty, husband of Smt. Kajal Chakraborty, claimant respondent No. 1 and the father of Sri Biswajit Chakraborty, claimant respondent No. 2, in a road traffic accident occurred on 13-3-2001.

2. Heard Mr. A Lodh, learned Counsel for the petitioner insurance company.

3. Considering the nature of the prayer and the question involved in the instant petition, the matter is taken up for decision and disposal at this motion stage as agreed to by the learned Counsel for the petitioner-insurance company.

4. Facts needed to be discussed for arriving at a proper decision are as follows:

The claimant-respondents namely, Smt. Kajal Chakraborty and Sri Biswajit Chakraborty filed a claim petition u/s 166 of the Act before the learned Member, Claims Tribunal claiming a compensation of Rs. 16,20,000/-, as their husband and father respectively, namely, Swapan Chakraborty died out of a vehicular accident occurred on 13-3-2001 near Nimbark Power Office on Agartala-Bishalgarh Road. The vehicle allegedly involved in the said accident is a jeep (Commander) bearing registration No. TR-01-4771. The Claims Tribunal registered the aforesaid claim petition as TS (MAC) No. 621 of 2002. In receipt of notice from the Claims Tribunal, the petitioner-Insurance Co. and the owner of the aforesaid vehicle bearing No. TR-01-4771 appeared in the proceeding and contested the suit by filing their respective written statement. When the claim proceeding, i.e. the suit was pending before the Claims Tribunal, the same was dismissed by order dated 23-9-2005 for default of non-appearance of the claimant-respondent Nos. 1 and 2. Being aggrieved by the said order of dismissal for default the claimant respondent filed a petition for restoration of the suit as stated earlier before the learned Member, Claims Tribunal and the said petition was registered as Civil Misc. Case No. 23 of 2007. The petitioner-Insurance Co. filed an objection to the said prayer for restoration on the ground that the provisions of the CPC has no application and more so the claimant respondents did not file any application u/s 5 of the Limitation Act along with the application for restoration for condoning the delay in preferring the said application. Learned Claims Tribunal took note of the decision of this Court reported in 2006 (Supp) GLT 306 Rocky Dev Burman v. Lohit Prakash Dutta wherein it was held that there is no provision empowering the Claims Tribunal to dismiss an application seeking compensation u/s 166 of the Act for default. If the claimant fails to appear and take steps and/or adduce evidence the Claims Tribunal is free to pass appropriate orders of "No Claim Award", i.e. award to the effect that the claimant has failed to prove his entitlement to get any compensation. The Claims Tribunal also condoned the delay of about 679 days (excluding the days taken for collecting certified copy of the order dated 23-9-2005) as the same was sufficiently explained by the claimant-respondents.

5. Being aggrieved by the said order of restoration of the suit, i.e. the claim petition u/s 166 of the Act after condonation of delay the petitioner preferred the instant revision petition.

6. Mr. Lodh, learned Counsel for the petitioner-Insurance Co. submitted that the instant revision petition can be disposed of in view of the judgment and order passed by this Court in the case of Sri Pranab Dhar v. Sri Rajesh Deb in WP(C) No. 76 of 2008 reported in Pranab Dhar Vs. Rajesh Deb and Another, as this Court has already held that the Claims Tribunal is empowered by the legislature to follow such summary procedure as it thinks fit while holding any inquiry u/s 168 of the Act and the Claims Tribunal is not prohibited to follow the general procedure prescribed in the Civil Procedure Code.

7. While making the aforesaid submission Mr. Lodh also tried to convince this Court that when the claimant-respondents filed the application for restoration under Order IX, Rule 4 of CPC-though the same is not applicable in a claim proceeding, then also that has to be filed within the prescribed period of limitation of 30 days and if that cannot be done then only the aid of Section 5 of the Limitation Act can be availed and when an application for condonation is filed the delay has to be properly explained and in the instant case according to Mr. Lodh, the reasons for delay were not properly explained and the whole order of the learned Claims Tribunal is unjust, unreasonable and requires to be set aside.

8. This Court has given anxious thought to the submissions of Mr. Lodh and also has gone through the impugned orders passed by the learned Claims Tribunal. For proper appreciation of the submission of the learned Counsel for the petitioner-insurance company, it is necessary to reproduce the relevant portion of the impugned order, which is as follows:

...Perused the record along with the case record of TS (MAC) 621/02, From the order dated 23-9-2005 passed in Case No. TS (MAC) 621/02 it reveals that the said claim case was dismissed for non-prosecution from the side of the petitioners.

Hon"ble Gauhati High Court in the case of Ashutosh Acherjee v. Abhijit Debbarma reported in 2006 (Supp) GLT 306 in respect of dismissal of claim petition under the Motor Vehicles Act for default of the petitioner observed that an application for compensation made under the Motor Vehicles Act, 1988 cannot be dismissed in default and if the claimant does not appear, take step and fails to prove his claim, the Tribunal has the power to give an award to the effect that the claimant is not entitled to any compensation.

Considering the materials on record, it reveals that the period of delay of about 679 days (excluding the dates taken for collecting certified copy of the order dated 23-9-2005) is sufficiently explained from the side of the petitioners.

In view of the above, considering the totality of the facts and circumstances and above referred decision of the Hon"ble High Court, I am of the considered view that the instant restoration application along with the application for condonation of delay preferred by the petitioners is required to be allowed for fair ends of justice.

Accordingly, the condonation application along with the restoration application Is allowed for fair ends of justice.

The order of dismissal dated 23-9-2005 passed in Case No. TS (MAC) 621/02 is hereby set aside the said claim petition to be restored in its original number.

The petitioners will not get any interest on the awarded amount of compensation, if any, awarded w.e.f. 23-9-2005 till today.

9. On perusal of the aforesaid order and consideration of the submission of Mr.

Lodh, this Court is of the considered opinion that when the Act and Rules do not prescribe any provision permitting or empowering the Claims Tribunal to dismiss an application in default seeking compensation under the Act, the Claims Tribunal should not have dismissed such application for mere default of the claimant-petitioner.

10. Now the question is when a Court and/or Tribunal has no power to dismiss the suit/claim petition for default then whether any restoration is called for from the side of the claimant petitioner. According to this Court when the fault was committed by the Court and not by the claimant petitioner, no restoration application was called for. A rustic woman like the claimant wife-respondent No. 1 and minor son like the claimant respondent No. 2 of the deceased should not be ousted from the Court of justice for the fault of Tribunal. In the instant case though the restoration application was not called for, even then also the claimant respondents knocked the door of justice to remind its duty and rectify the wrong committed by it by way of filing the restoration application so that they can get the fruits of the beneficial legislation like the Motor Vehicles Act.

11. This Court is of the further opinion that the Claims Tribunal by way of passing the impugned order did not commit any wrong rather tried to correct itself as the Tribunal is set up by the State for doing justice and not for committing injustice to the distressed citizen like the respondent claimants. When the application for restoration is not required to be filed for setting aside the order of dismissal for default which was passed by the Claims Tribunal without jurisdiction, question of filing application for condonation of delay u/s 5 of the Limitation Act is also not called for and if application for condonation of delay is not called for then question of proper explanation of the delay in filing the restoration application, as contended by Mr. Lodh, does not arise. Even if for argument sake it is admitted that an application for condonation of delay is necessary as the claimant respondents filed an application under Order 9, Rule IV of CPC. Then also it is in the discretion of the Claims, Tribunal to see whether the delay was properly explained or not. In the instant case, the claims tribunal did not commit any wrong and considering the fact that the wrong was committed by it, condoned the delay and set aside the order of dismissal for default dated 23-9-2005 and restored the claim petition in its original file. Rather the same was done for the interest of justice as the procedure is left to be decided by the Tribunal to a suit carrying out its functions under the Act, particularly under the provisions of Section 169(i). The instant petition is filed under Article 227 of the Constitution before this Court for exercising its supervisory power.

12. In the case of Royal Education Society Vs. LIS (India) Construction Co. Pvt. Ltd., the Apex Court held that every Tribunal has the inherent power of recalling its own order if sufficient causes is shown there for. In the aforesaid case, the Apex Court also noted:

the principle of natural justice, which in a case of this nature, in our opinion, envisage that a mistake committed by the Tribunal in not noticing the facts

involved in the appeal which would attract the ancillary and/or incidental power of the Tribunal necessary to discharge its functions effectively for the purpose of doing justice between the parties, were required to be complied with.

13. In the instant case the Tribunal condoned the delay and set aside the order of dismissal for default and restored the suit to its original file which is nothing but the recalling of its earlier order for interest of justice which was passed either due to ignorance of law or mistake.

14. We have to remember that the Courts are being justice oriented to provide the substantial justice to the justice seeker. If the Court commits any error, it is its duty to rectify such an error for the interest of justice, as justice is the prime consideration, not the technical tyranny.

15. It is a settled position of law that when the Tribunal did not commit any wrong while deciding the impugned order, and also acted within its own jurisdiction to discharge its function properly, the High Court should not interfere with such an order exercising its power under Article 227 of the Constitution. The Court should normally exercise the revisional jurisdiction vested in it under Article 227 of the Constitution, when the Court subordinate to it and/or Tribunals pass an order either without jurisdiction or perverse or there is an error apparent on the face of the order which adversely affected the interest of the parties without their fault, but as this Court has already opined that in the instant case the Claims Tribunal did not commit any wrong rectifying its own order, even on the basis of an application for restoration though the same was not the requirement of law, no interference is called for. No case is made put for admission of the revision petition under Article 227 of the Constitution.

16. Accordingly the petition is dismissed.

No order as to costs.