
(2013) 04 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1862 of 2011

Patas Kanwar (Smt.) and Others

APPELLANT

Vs

Gordhan Ram and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 2 WLN 610

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rajesh Panwar, for the Appellant; Dhanpat Choudhary, Advocate for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This appeal has been preferred by the claimants-appellants aggrieved against the rejection of their application for compensation ("Application") by the Judge, Motor Accident Claims Tribunal, Phalodi, District Jodhpur ("the Tribunal"). The brief facts of the case are that the claimants filed an application seeking compensation on account of death of one Mool Singh, who died on account of injuries suffered by him, while travelling in Jeep No. RJ-06-G-3084 on 30.03.2007.

2. It appears that during the pendency of the application despite giving seven opportunities to lead evidence the claimants did not lead any oral or documentary evidence in support of their application and consequently, the application was rejected by the Tribunal on account of lack of evidence on all the issues raised by the Tribunal based on the pleadings of the parties.

3. It is submitted by learned counsel for the appellants-claimants that the claimants are residence of remote village in Tehsil Phalodi and on account of lack of communication and illiteracy, they could not contact the counsel and lead the evidence in support of their claim. It was further submitted that the deceased Mool Singh is survived by young widow and four children and in case, the

impugned judgment is not set-aside and they are not granted opportunity to lead evidence, they would suffer irreparable injury as the sole bread earner has already died and they are left to fend for themselves. It is prayed on behalf of the appellants that one opportunity may be granted to the appellants to lead evidence in the interest of justice.

4. Learned counsel appearing for respondent-Insurance Company submitted that the negligence of the appellant is writ large on record inasmuch as seven opportunities were granted to lead evidence, however, they choose not to lead evidence and, therefore, there is no question of granting further opportunity and the order passed by the Tribunal is just and proper in the facts and circumstances of the case.

5. I have considered the rival submissions made by the learned counsel at the Bar.

6. It is true that the conduct of the appellants in not pursuing their claims before the Tribunal is writ large on the record. The plea raised regarding lack of communication with the counsel and illiteracy of the appellants also appears to be a lame excuse for such negligence. However, looking to the age of the appellant Smt. Patas Kanwar and the fact that there are four minor children, aged between 5 to 12 years, of the deceased Mool Singh, who are claiming compensation for untimely death of her husband/their father, grant of one opportunity to the said claimants would be in the interest of justice in the peculiar facts and circumstances of the case.

7. In view of the above, the appeal filed by the appellants is allowed. The judgment and award dt. 28.4.2011 passed by the Tribunal in MACT Case No. 18/2008 (Smt. Patas Kanwar & Ors. vs. Gordhan Ram & Ors.) is set-aside. The said claim case is restored back to the file of Motor Accidents Claims Tribunal, Phalodi, District Jodhpur with a direction to provide one opportunity to the claimants to lead their evidence.

8. The appellants-claimants are directed to produce their all evidence on one date to be fixed by the Tribunal as per its convenience.

9. In the first instance, the claimants and the Insurance Company shall appear before the Tribunal on 28.05.2013. The Tribunal shall take into consideration the fact that the entire proceedings from the year 2009 to 2013 were delayed on account of the negligence of the appellants-claimants first by not leading evidence and then on account of pendency of this appeal while awarding interest in case the claimants succeed before the Tribunal in their application for compensation.