
(1982) 12 GUJ CK 0010
In the Gujarat High Court

Rahulbhai M. Godadhara

APPELLANT

Vs

Vijay Mafatlal Shah and Others

RESPONDENT

Date of Decision : 14-12-1982

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 307

Citation : (1984) ACJ 457 : (1983) 1 GLR 602

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—In a Motor Accident Claims case the petitioner claimant preferred an application to summon a witness and to allow him to be examined on his behalf. The application was submitted at a late stage, that is, at the stage of the argument of the case. This has been rejected by the Motor Accident Claims Tribunal (No. 3), Ahmedabad. The decision of the Tribunal below Exhibit 128 in Motor Accident Claims Application No. 225 of 1981 is challenged by filing the present Civil Revision Application.

2. The petitioner herein is the original claimant who has suffered some injury on account of an accident and for the purposes of recovery of compensation he filed the aforesaid claim application before the Tribunal. It appears that after the evidence of the petitioner was over and after the other side filed pursis to the effect that it did not wish to lead any oral evidence and the date on which the matter was fixed for hearing of the arguments of the parties, the petitioner submitted an application Exhibit 128 and prayed that a witness named Shri J. P. Sehgal, Public Relations Officer of the Gujarat Small Industries Corporation, be summoned and be allowed to be examined as a witness for the petitioner. The Tribunal rejected this application inter alia on the ground that the application was given at a very late stage. Another ground which weighed with the Tribunal for rejecting the application was that certificate Exhibit 16 referred to in the application was not required to be proved and the contents thereof were already proved.

3. Before rejecting the application the Tribunal ought to have posed the questions - if the application is granted, is it likely to cause any prejudice to the other side? Is the examination of the witness necessary for arriving at a just decision of the case? From this angle, the question has not been examined at all. It must be stated that when the counsel for the respondent was asked as to whether any prejudice is likely to be caused if the witness is allowed to be examined at this stage, he candidly submitted that there would not be any prejudice caused to the other side. Even on merits it appears that, had the Tribunal examined the question from this angle, it would have come to the conclusion that the other side was not likely to be prejudiced at all if the witness was allowed to be examined. Unless the delay is likely to cause prejudice to the other side, mere delay in submitting an application cannot and should not have any bearing while arriving at a decision on such applications.

4. Reference to certificate Exhibit 16 made by the Tribunal appears to be erroneous inasmuch as application Exhibit 128 refers to certificate Exhibit 16 for the purpose of description of the witness. As stated by the petitioner, witness Shri J.P. Sehgal has been described as the Public Relations Officer of the Gujarat Small Industries Corporation, in certificate Exhibit 16. So the second ground which weighed with the Tribunal is based on misreading of the application.

5. In this connection a reference may be made to Rule 307 of the Bombay Motor Vehicles Rules, 1959 which reads as follows:

307. Summoning of witnesses. - If an application is presented by any party to the proceedings for citation of witnesses, the Claims Tribunal shall, on payment of such expenses and fees, if any, as it may determine, issue summonses for the appearance of such witnesses, unless it considers that their appearance is not necessary for a just decision of the case.

The Tribunal has not found that the examination of the witness concerned is not necessary for the just decision of the case. Unfortunately the attention of the Tribunal was not drawn to this provision of the rule at all. Instead the provisions of the CPC have been referred to and the entire discussion has proceeded on the footing as if the provisions of Order 16 of the CPC are applicable. In this connection reference may also be made to Rule 310 of the above Rules wherein it is provided as follows:

310. CPC to apply in certain cases. - In so far as these rules make no provision or make insufficient provision, the Claims Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) for the trial of suits.

6. As far as the question of summoning of the witnesses is concerned, provision has been made in these rules. Therefore, the question ought to have been decided by the Tribunal by making a reference to these Rules. The only question which ought to have been posed and decided by the Tribunal was as to whether examining a witness as requested by the petitioner was necessary for a just decision of the case. In this case the witness is required to be examined by the

petitioner for the purpose of showing the loss of future prospects of the petitioner in service and according to the petitioner the witness is in a position to depose on this point. In this view of the matter, the examination of the witness will be definitely necessary for the purpose of arriving at a just decision of the case.

7. The Tribunal has made certain observations while passing the order below application Exhibit 127 and the impugned order. The observations pertain to the negligent and lethargic manner of the advocates conducting the motor accident claims cases. The observations may be germane and may be true also. I am not expressing any opinion regarding the correctness or otherwise of the observations of the Tribunal. But one fact should not be lost sight of and it is this that the Courts and Tribunals are meant for doing substantial justice and when no prejudice is likely to be caused to the other side and the prayer for examination of witness, or production of document or such other similar prayer is made, though at a late stage, the same should ordinarily be not rejected if it is not likely to cause prejudice to the other side and much more so if it is necessary for arriving at a just decision of the case.

8. In above view of the matter, the order passed by the Tribunal below application Exhibit 128 is quashed and set aside. Application Exhibit 128 of the petitioner is allowed. The counsel for the petitioner has assured that he will give full co-operation in proceeding with the matter and he will also try to see that the summons is served upon the witness well in advance. The Tribunal is directed to proceed further with the case in accordance with law. Rule is made absolute with no order as to costs.