

**(2023) 06 GUJ CK 0060**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 9891 Of 2023**

Ranjitsinh Chhatrasinh Solanki

APPELLANT

Vs

Solanki Gopalbhai Mangalbhai

RESPONDENT

**Date of Decision : 16-06-2023**

**Acts Referred:**

Gujarat Motor Vehicles Rules, 1989 — Rule 229

Code Of Civil Procedure, 1908 — Section 2(2), 115, Order 9 Rule 4

**Citation : (2023) 06 GUJ CK 0060**

**Hon'ble Judges : Gita Gopi, J**

**Bench : Single Bench**

**Advocate : Nishit A Bhalodi**

**Final Decision : Allowed**

## Judgement

Gita Gopi, J

1. Mr. Nishit A.Bhalodi, learned advocate for the petitioner submits that the claimants are before this court aggrieved by the order of the learned Tribunal dated 2. 02.2021, wherein the claim petition came to be dismissed observing that the applicant had neither produced oral as well as documentary evidence, and has failed to prove the involvement of the vehicle.

2. Mr. Bhalodi stated that the learned Tribunal had framed the issues at Exhibit-15 on 25.02.2020 and thereafter the nation was suffering Covid-19 pandemic and owing to the lock-down the physical functioning of the Court was also stopped. In spite of that fact, on 02.02.2021, the learned Tribunal dismissed the claim petition without even considering the fact that the movement of the people were restricted owing to the lock-down, and the learned Tribunal has failed to even appreciate that aspect.

3. The claim petition came to be dismissed on 2. 02.2021, where the physical functioning of the courts were restricted and owing to the lock-down litigants could not physically appear before the courts. The issues were framed on

25.02.2020 below Exhibit-15. The learned Tribunal has noted that notice was served on 27.06.2019, and, thus thereupon observed that the applicant and his learned advocate failed to file his deposition in support of the claim petition. Advocate Mr. Bhalodi stated that it was only on 25.02.2020, the issues were framed below Exhibit-15 in impugned Motor Accident Claims Petition No.1514 of 2017. Learned Advocate Mr. Bhalodi has produced certified copy of Exhibit-15, which reflects the same.

4. In case of *Bharatbhai Narsinghbhai Chaudhary and Others v. Malek Rafik Malek Himmatbhai*, reported in 2011 (2) G.L.R. 1324, it has been held that the learned Tribunal has no power to dismiss the Claim Petition for default taking into consideration the object behind the Motor Vehicles Act, 1988, i.e. to provide adequate compensation to the claimants. The relevant part of the above decision is reproduced herein below:-

"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)"

"5.13. The object of the Act, which is a benevolent provision or social welfare legislation under which, compensation is paid, has to be considered liberally and the intention of the Legislature enacting such provisions to achieve the said

object, has to be considered. While interpretation of the provisions of social welfare legislation, the Courts should adopt an approach in such a manner, that in any event, it fulfills the policy of the legislation. The interpretation to be adopted, should be more beneficial to a person in whose favour and in whose interest the Act has been passed. While dealing with application under the Act, the interpretation has to be for the benefit of the poor victims. It is, therefore, necessary to take a constructive and positive attitude in interpreting the provisions of these types and determine the main aim or object of a particular Act in question for adjudication before the Court.

5.14. The Act and the Rules framed thereunder also do not empower the Claims Tribunal to dispose an application merely for default of the applicant without arriving at findings on merits of the case, after the stage of framing issues. In the instant case, issues were framed, and thereafter, the learned Tribunal was required to decide the case on merits with a view to provide substantial justice, instead of entering into the technicalities.”

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).”

5. It appears that learned Tribunal has failed to even appreciate the proceedings of its own Court and has dismissed the claim petition, while observing of adjournments granted on Exhibits 10 and 11. The stage for filing the oral and documentary evidence would come only after the issues would be framed. Here, in this case, the issues were framed only at Exhibit-15. The dismissal of the claim petition is on wrong premise without even appreciating the record and proceedings.

6. Taking into consideration the reasons given hereinabove, the learned Tribunal has failed to take into consideration the object of benevolent act. The learned Tribunal is always require to decide the claim petition on merits.

7. Hence, in view of the above reasons, the present petition is allowed. The order dated 02..02.2021 passed in M.A.C.P. No.1514 of 2017 is quashed and set aside. The matter is remitted back to the concerned Tribunal and the concerned Tribunal is directed to consider the case on merits. Let the exercise of recording the evidence be completed within a period of five months.