
(2013) 02 DEL CK 0394
In the Delhi High Court
Case No : MAC.A. 1098 of 2012

Rekha Devi

APPELLANT

Vs

Pradeep

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2013) 3 AD 150

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Manpreet Kaur, for the Appellant;

Judgement

Suresh Kait, J.—Instant appeal is filed against the impugned award dated 25.04.2012 whereby the Id. Tribunal has dismissed the petition filed by the appellant for non-prosecution. In the present case, DAR was filed in respect of the accident dated 21.10.2011 which took place in front of MCD, Main Police Station Road and in front of H-Block, Delhi. In that accident one Sh. Raj Kumar (deceased) expired while crossing the road due to rash and negligent driving of the motorcycle, make- Pulsar, bearing no. DL-8SAU-5601 being driven by its owner Mr. Pradeep (respondent). As per DAR, the offending vehicle was not insured.

2. A criminal case u/s 279/304A IPC was registered against the respondent vide FIR no. 450/2011 at Police Station-Mongol Puri.

3. As per the trial court record, copies of the DAR were supplied to the appellant/claimant on 19.01.2012 and the matter was fixed for filing the written statements on 16.02.2012. Since none appeared on behalf of the respondent on 16.02.2012 he was proceeded ex-parte and the matter was listed on 26.03.2012 for ex-parte evidence.

4. On the said date, counsel for the LRs of deceased was present, however, he could not produce any witness in support of the claim and he sought

adjournment and thereafter the matter was listed on 25.04.2012 for entire evidence.

5. Since the appellant/claimant could not produce any evidence on that date, therefore Id. Tribunal dismissed the claim petition filed by the appellant/claimant

6. As recorded by the Id. Tribunal, the petitioner/claimant did not lead any evidence despite effective opportunities. She neither got examined herself nor any other witness and even no affidavit was filed.

7. It is further recorded that as per the record, in fact the petitioner/claimant hardly appeared in the case. Last opportunity was granted to her to complete the evidence vide order dated 26.03.2012, but she failed to lead even a single evidence.

8. Therefore, the Id. Tribunal was compelled to withhold the interest due to lapses and delay committed on behalf of the appellant/claimant

9. I note, the ground of dismissal of the claim petition filed by the appellant/claimant is contrary to the order sheet.

10. I further note, either the counsel or the legal heirs of the deceased continued to appear before the Id. Tribunal, however due to some reason, they could not produce the witnesses on the date fixed by the Id. Tribunal.

11. The present case is being filed under welfare legislation. One life has been lost. Moreover, the respondent was proceeded ex-parte before the id. Tribunal and he preferred not to appear before this Court even after service.

12. I also note that the appellant/claimant filed a restoration application before the Id. Tribunal along with the evidence and list of witnesses. However, same has been rightly dismissed.

13. In the facts and circumstances of the case. Id. Tribunal should have given more opportunities to the appellants/claimants so that they could be able to prove their case. Therefore, I set aside the impugned award dated 25.04.2012 passed by the Id. Tribunal, consequently, Id. Tribunal is directed to give the sufficient opportunities to the appellants/claimants to produce their witnesses.

14. Therefore, the appellant is directed to appear before the Id. Tribunal on 16.02.2013. Id. Tribunal shall be at liberty to fix the date as per its convenience.

15. In view of the above, petition stands disposed of. Trial Court Record be sent back to the court concerned along with the copy of this order.

CM. NO. 17721/2012 (Delay)

In view of the above instant application has also become infructuous and disposed of as such.