

(2018) 02 CHH CK 0134

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 238 Of 2018

Reliance General Insurance Company Limited

APPELLANT

Vs

Pratibha And Ors

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2018) 02 CHH CK 0134

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Sourabh Sharma

Final Decision : Dismissed

Judgement

P. Sam Koshy, J

1. Present is an appeal filed by the Insurance Company challenging the award dated 22/10/2013.
2. The record shows that, the appeal has been filed with a delay of more than 1465 days i.e. of about 4 years time.
3. The brief facts relevant for adjudication of I.A.No.1, which is an application for condonation of delay is that, the claimants in the instant case had filed an application under Section 166 of the Motor Vehicles Act in a death case before the Additional Motor Accident Claims Tribunal, Kondagaon where the case was registered as Motor Accident Claim Case No.04/2010.
4. Initially, an ex-parte award was passed on 08/10/2010 whereby the claimants were awarded with a compensation of Rs.50,000/- with interest @ 6% per annum.
5. Against this award, the claimants had preferred an appeal before the High Court under Section 173 of the Motor Vehicles Act where the appeal was registered as MAC No.17/2011. The said appeal stood decided on 11/04/2013

where this Court had set aside the ex-parte award and remanded the matter back to the Tribunal for a fresh adjudication and the parties in the dispute were directed to appear before the Tribunal on 12/06/2013.

6. On remand, the matter was renumbered as Motor Accident Claim Case No.25/2013. In spite of specific direction being given for the Insurance Company to appear before the Tribunal on 12/06/2013, they choose not to appear and contest the case and again an ex-parte award was passed on 22/10/2013 where the Tribunal has awarded a compensation of Rs.20,97,948/- with interest @ 6% per annum from the date of application.

7. Against this, an MCC for setting aside of the above said ex-parte award was filed by the Insurance Company on 02/12/2015 i.e. after more than two years from the date the ex-parte award was passed. This MCC stood dismissed on 17/04/2017. While rejecting the said MCC, the Tribunal had categorically taken into consideration the pleadings which were led by the Insurance Company and found that, the contentions raised by the Insurance Company were not proper and correct and that they were duly served with the notice issued from the Tribunal and further in spite of specific date being given by the High Court while remanding the matter on 11/04/2013, they did not appear before the Tribunal, nor tried to contest the case on merits.

8. Subsequently, a Writ Petition was filed by the Insurance Company under Article 227 of Constitution of India where the case was registered as WP227 No.672/2017. The High Court vide its order dated 14/09/2017 reached to the conclusion that, the order dated 17/04/2017 does not have any illegality, nor was there any jurisdictional error in the impugned order and further the High Court held that, the Tribunal while deciding the MCC has given valid reasons for rejecting the same and the High Court rejected the Writ Petition.

9. Subsequent to the dismissal of the Writ Petition on 14/09/2017, the Insurance Company have now preferred the present appeal under Section 173 of the Motor Vehicles Act seeking condonation of delay of more than 1465 days.

10. This court is inclined to reject the application for condonation of delay only on the ground that, this High Court in WP227 No.672/2017 on 14/09/2017 has already considered the veracity and legality of the order passed on 17/04/2017. This Court in the said order has categorically held that, the order passed in MCC seeking setting aside of an ex-parte award was proper, legal and justified and the High Court did not find any error on part of the Tribunal while deciding the application on 17/04/2017.

11. Given the fact that, the High Court has already rejected the Writ Petition, this court does not find any strong case made out by the counsel for the Insurance Company calling for an interference with the finding of the Tribunal now by exercising the appellate jurisdiction under Section 173 of the Motor Vehicles Act. Further this Court also does not find the explanation provided by the Insurance Company for condonation of delay to be either satisfactory or justified.

12. Accordingly, I.A.No.1 deserves to be and is accordingly rejected. As a consequence, the appeal also stands rejected.