

(2017) 05 KAR CK 0032
In the Karnataka High Court
Case No : 204583 of 2016

SHARANAPPA S/O DHAREPPA GOLNOOR & ORS

APPELLANT

Vs

THE MANAGING DIRECTOR, NEKRTC

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 2](#),
[Section 151](#), [Section 17](#), [Order 6 Rule 17](#), [Section 152](#),
[Section 153](#)

Citation : (2017) 05 KAR CK 0032

Hon'ble Judges : B.Veerappa

Bench : SINGLE BENCH

Advocate : SHIVANAND PATIL, SANDEEP PATIL, SHARANABASAPPA M. PATIL

Judgement

1. The petitioner is the father of the deceased Ashok Golnoor, who died in a road traffic accident on 20.08.2010 is before this Court for a writ of certiorari to quash the order dated 16.02.2016 made in MVC No.513/2011 on the file of the Motor Accident Claims Tribunal, Gulbarga rejecting the application to permit the petitioner to amend his claim petition. I. THE BRIEF FACTS OF THE CASE ARE:

2. The only son of the 1st petitioner Sri Ashok Golnoor died in a road traffic accident on 20.08.2010 on account of rash and negligent driving of the driver of the bus bearing No.KA-32/F-963. Therefore, the father, wife, daughter and son of the deceased have filed a claim petition in MVC No.513/2011 before the claims Tribunal under the provisions of Section 166 of the Motor Vehicles Act claiming compensation from the respondent - Corporation. After contest, the Tribunal recorded a finding that the deceased Ashok Golnoor, the son of the first petitioner died in a road traffic accident on account of rash and negligent driving of the driver of the bus. The respondent - Corporation has failed to prove that the deceased has contributed for the accident and the claimants are entitled for compensation. Accordingly, the Tribunal by an award dated 29.02.2012 awarded compensation of Rs.27,17,600/- along with interest at 6% per annum from the

date of petition till its realization.

3. It is also not in dispute that aggrieved by the said judgment and award passed by the Tribunal awarding compensation in favour of the claimants, the respondent - Corporation filed and appeal in MFA No.31050/2012 before this Court. The Division Bench of this Court after hearing both the parties by its order dated 22.10.2013 dismissed the appeal by confirming the judgment and award passed by the Tribunal. The judgment and award passed by this Court has reached finality.

4. Thereafter, the petitioners have filed an application before the Tribunal under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure praying for amendment of the cause title in the claim petition contending that due to the oversight and by typing mistake in the cause title, the name and age of the first petitioner has been wrongly shown as "Sharanappa S/o Ashok Golnoor, aged about 6 years" instead of "Sharanappa S/o late Dhareppa Golnoor, aged about 68 years". In Column No.19 after word wife and sons the word "father" is to be added. In Column No.22 in the 2nd line after the word "son" the word "father" is to be added. The respondent - Corporation has not filed any objections to the said application.

5. The Tribunal while considering the said application has allowed the petitioners to adduce evidence. Accordingly, the 1st petitioner has filed an affidavit of evidence under Order XVIII Rule 4 of the Code of Civil Procedure stating that the first petitioner was wrongly shown as son of the deceased instead of father of the deceased and also his name and age has been shown as "Sharanappa S/o Ashok Golnoor, aged about 6 years" instead of "Sharanappa S/o late Dhareppa Golnoor, aged about 68 years". Therefore, the petitioners have sought to amend the cause title of the claim petition. The respondent - Corporation has not cross examined the first petitioner, nor adduced any contra evidence, nor disputed the fact that the first petitioner Sharanappa Golnoor is the father of Ashok Golnoor and not the son of the deceased Ashok Golnoor.

6. The Tribunal while considering the application, by the impugned order dated 16.02.2016 dismissed the same mainly on the ground that it has been filed after lapse of four years and the mistake is not only in the petition but it is in all the documents including the judgment and award. Hence, the present writ petition is filed for the relief sought for. II. RIVAL CONTENTIONS OF THE LEARNED COUNSEL FOR THE PARTIES.

7. I have heard learned counsel for the parties to the lis.

8. Sri Shivanand Patil, learned counsel for the first petitioner vehemently contended that the impugned order passed by the Tribunal rejecting the application for amendment/correction of the cause title in the claim petition is erroneous and contrary to the material on record. The Tribunal has failed to notice that the petitioners have filed the said application for amendment/correction of the name and age of the first petitioner and have adduced evidence.

The respondent - Corporation has not cross- examined the first petitioner, nor filed any contra material to disprove the statement made by the first petitioner on oath. In the absence of the same, the Tribunal was not justified in rejecting the application mainly on the ground that there was a delay of four years in filing the application. He further contended that the Court is meant for to do the substantial justice to the parties and should not reject the genuine claim of the parties on technical grounds. Therefore, he sought to quash the impugned order passed by the Tribunal.

9. Per contra, Sri Sandeep Patil, learned counsel for petitioner Nos.2 to 4 (wife, son and daughter of the deceased) supports the case of the 1st petitioner and not disputed the fact that the first petitioner is the father of the deceased, who is aged about 68 years as on the date of the filing of the claim petition but, first petitioner has been wrongly shown as son of the deceased instead of the father of the deceased. Therefore, he sought to allow the writ petition.

10. Sri Sharanabasappa M. Patil, learned counsel for respondent - Corporation sought to justify the impugned order of the Tribunal and contended that the amendment/correction in the cause title of the claim petition has been sought after lapse of four years. Therefore, the Tribunal is justified in dismissing the application. III. POINT FOR DETERMINATION

11. In view of the rival contentions urged by learned counsel for the parties, the only point that arises for consideration in the present writ petition is: "Whether the Tribunal is justified in rejecting the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure filed by the petitioners for amendment/correction of the cause title in the claim petition in the facts and circumstances of the present case?"

IV. CONSIDERATION

12. I have given my anxious consideration to the arguments advanced by learned counsel for the parties and perused the entire material on record carefully.

13. It is an undisputed fact that the deceased Ashok Golnoor, aged about 40 years died in a road traffic accident on 20.08.2010 due to rash and negligent driving of the driver of the bus bearing No.KA-32/F-963. It is also not in dispute that the petitioners have jointly filed the claim petition under the provisions of Section 166 of the Motor Vehicles Act claiming compensation on account of untimely death of the deceased. It is also not in dispute that the Tribunal after considering the entire material on record, by the judgment and award dated 29.02.2012 awarded compensation of Rs.27,17, 600/- with interest at 6% per annum from the date of petition till its realization. It is also not in dispute that being aggrieved by the judgment and award passed by the Tribunal, the respondent - Corporation has filed an appeal in MFA No.31050/2012 before this Court. The Division Bench of this Court by the judgment dated 22.10.2013 dismissed the said appeal as devoid of merit by confirming the judgment and

award passed by the Tribunal.

14. It is also not in dispute that after passing of the judgment and award by this Court, the petitioners have filed an application under Order VI Rule 17 of CPC read with Section 151 of the Code of Civil Procedure to permit the fourth petitioner therein to amend his name and age in the claim petition contending that due to oversight and by typing mistake in the cause title, the name of fourth petitioner wrongly typed as "Sharanappa S/o Ashok Golnoor, aged about 6 years" instead of "Sharanappa S/o late Dhareppa Golnoor, aged about 68 years". The said application was not at all opposed by the respondent - Corporation. It is also not in dispute that the 1st petitioner has adduced evidence and reiterated the averments made in the application contending that by typing mistake in the cause title his name and age was wrongly typed as "Sharanappa S/o Ashok Golnoor, aged about 6 years" instead of "Sharanappa S/o late Dhareppa Golnoor, aged about 68 years". The said statement made on oath has not been disputed by the respondent - Corporation, nor cross examined the fourth petitioner therein and nor produced any documents to disprove the claim of the petitioners that the fourth petitioner was the father of the deceased, aged about 68 years as on the date of the filing of the claim petition.

15. The Tribunal has proceeded to dismiss the said application mainly on the ground that the same was filed after lapse of four years and judgment and award depicts the same. The Tribunal has failed to notice that though the counsel for the petitioners have filed an application under Order VI Rule 17 read with Section 151 of the Code of Civil procedure, the fact remains that the prayer sought for is only for correction of the name and age of the first petitioner herein. The parties should not being thrown out at the very threshold causing justice being defeated when the Courts are meant for justice. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.

16. In the present case, admittedly either of the parties including the contesting respondent - Corporation has not disputed the fact that the first petitioner is the father of the deceased, aged about 68 years as on the date of filing of the claim petition. It is the mistake of the learned counsel who was representing the petitioners before the Tribunal. It was purely typing mistake by wrongly showing the name and age of the first petitioner as "Sharanappa S/o Ashok Golnoor, aged about 6 years" instead of "Sharanappa S/o late Dhareppa Golnoor, aged about 68 years". When the Tribunal as well as this Court while awarding compensation admitted that the petitioners are the legal representatives of the deceased. The fact remains that instead of "father" it was wrongly mentioned as "son", aged about 6 years instead of 68 years. On technical grounds, parties should not thrown out when the real fact is not disputed that he is the father of the deceased. The said aspect of the matter has not been considered by the Tribunal.

V. RELEVANT PROVISIONS OF THE CODE OF CIVIL PROCEDURE

17. The legislature while enacting the provisions of Sections 151, 152 and 153 of

the Civil Procedure Code has granted inherent powers to the Court to prevent the abuse of the process of the Court. Sections 151, 152 and 153 of the Code of Civil Procedure reads as under: "151. Saving of inherent powers of Court. - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders. - Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be correct by the Court either of its own motion or on the application of any of the parties.

153. General power to amend. - The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

18. From a plain reading of the said sections, makes it clear that for any clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be correct by the Court either of its own motion or on the application of any of the parties. Admittedly, in the present case, the clerical mistake or typing mistake was only in mentioning the name and age of the first petitioner. The said mistake can be corrected at any time. Therefore, the finding recorded by the Tribunal that the application is filed after lapse of four years is contrary to the material on record and contrary to law. VI. DICTUMS OF THE HON"BLE APEX COURT

19. The Hon"ble Supreme Court while considering the provisions of Sections 151 and 152 and Order VI Rule 17 of Code of Civil Procedure in the case of Niyamat Ali Molla vs. Sonargon Housing Cooperative Society Ltd., and Others reported in (2007) 13 SCC 421, has held as under: "18. Section 152 of the Code of Civil Procedure empowers the Court to correct its own error in a judgment, decree or order from any accidental slip or omission. The principle behind the said provision is *actus curiae neminem gravabit*, i.e., nobody shall be prejudiced by an act of Court.

19. The Code of Civil Procedure recognises the inherent power of the Court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the Code but also inherent power in general. The Courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil

Procedure. Such a power of the Court is well recognized."

20. It is also well settled law that on account of mistake on the part of the learned counsel representing the petitioners before the Tribunal by wrongly showing the name of the first petitioner which was purely typographical error and the parties should not suffer in view of the dictum of the Hon"ble Supreme Court in the case of Rafiq and Another vs. Munshilal and Another reported in (1981) 2 SCC 788 and it is held as under: "3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be he do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that

order is reserved with the party represented by Mr. A.K.Sanghi.

4. Appeal allowed to the extent indicated with costs in the manner indicated."

21. The Hon"ble Supreme Court while considering the provisions of Sections 151 and 152, Order 2 read with Section 2 and Order 6 read with Section 17 of the Code of Civil Procedure in the case of Tilak Raj vs. Baikunthi Devi (Dead) by LRs. reported in (2010) 12 SCC 585 has held as under: "23. The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section 152 CPC. The counsel appearing for the respondents also during his submissions fairly accepted the aforesaid position. The remedy that was available to the appellant was to file an application seeking for amendment of the decree by way of correcting the clerical mistake in respect of khasra number. Since the mistake was clerical in nature and the appellant being not responsible for the said clerical mistake which had occurred due to wrong recording of the Khasra number in Khasra girdawari, we find no reason as to why such a genuine and bona fide mistake cannot be allowed to be corrected by exercising the powers under Section 151 of CPC.

24. In K.Rajamouli Vs. A.V.K.N. Swamy, (2001)5 SCC 37, this Court held as follows: (SCC p.41, para 6)

"6. Section 152 provides that a clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties."

25. Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for subserving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the court should not bind itself by the shackles of technicalities."

VII. CONCLUSION AND RESULT

22. For the reasons stated above, the point raised in the present writ petition has to be answered in the negative holding that the Tribunal is not justified in rejecting the application filed for amendment/correction of the name and age of the first petitioner in the cause title.

23. In view of the aforesaid reasons, the writ petition is allowed. The impugned order dated 16.02.2016 on the application filed in MVC No.513/2011, on the file of the Motor Accident Claims Tribunal at Gulbarga is set aside. The application filed by the petitioners under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure is allowed. The first petitioner is permitted to amend the cause title by correcting his name and age as "Sharanappa S/o late Dhareppa Golnoor,

aged about 68 years" instead of "Sharanappa S/o Ashok Golnoor, aged about 6 years". The Tribunal is directed to correct the cause title of the judgment and award forthwith and issue corrected copy of the judgment and award enabling the petitioners for implementation of the judgment and award of the Tribunal confirmed by this Court in MFA No.31050/2012. Ordered accordingly.