

RAJASTHAN HIGH COURT

Bheru Lal

Vs.

Raghubeer

C.W.P. No. 1510 of 2003

(S.K. Keshote, J.)

17.10.2003

ORDER

S. K. Keshote, J.

1. Heard learned counsel for the petitioners, perused the writ petition and its enclosures.
2. By this writ petition under Article 227 of the Constitution of India, the claimant petitioners are praying for quashing and setting aside of the order dated 8th of May, 1999 (Annexure-1) and order dated 13th of July, 2001 of the learned Judge, Motor Accident Claims Tribunal, Kekri (for short, 'the Tribunal'). Further prayer is made for restoration of the claim petition to its original number with a direction to the learned Tribunal to decide the same within the stipulated period.
3. The facts, in brief, giving rise to filing of this petition are that the claimant petitioners filed a claim petition before the learned Tribunal claiming compensation to the tune of Rs. 7,17,500/- for the loss suffered by them due to the death of their minor son aged 9 years, a student of Second class, in an accident took place on 27th of August, 1994. This claim petition was registered as claim case No. 24/1994. They engaged Sri Jag Mohan Singh, Sr. Advocate. He assured the claimants petitioners that he would attend each and every date in the matter and when their presence would be required, he would inform them accordingly.
4. It is stated that after presentation of the claim petition, unfortunately the counsel for the claimants petitioners suffered by cancer disease. He remained hospitalized for a long time and ultimately died. When the claimant petitioners came to know of the death of their counsel, the claimant petitioner No. 1 rushed to the Tribunal personally

and made a search of the position of the claim petition.

5. On 18th of December, 1996 for the first time he came to know that the claim petition has been dismissed for non prosecution on 8th of May, 1995. He contacted Sri Ramesh Dhabhai, Advocate and moved an application on 27-1-1997 for restoration of the claim duly supported by an affidavit. He also filed an application under Section 5 of the Limitation Act for condonation of delay. The notices of this application were issued to the respondents. None of the respondents filed reply to the application. Under the impugned order the learned trial Court dismissed that application and thus this writ petition.

6. From the order of the learned Tribunal, I find that orally this application was strongly opposed by the Insurance Company. In such matters and more so after the amendment made by the Parliament in Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act, 1988'), opposition of the application for restoration by the Insurance Company is difficult to appreciate.

7. This Court has granted time to the counsel for the Insurance Company to take instructions in the matter whether the Insurance Company is really opposing it. The learned counsel has taken instructions and stated that the Insurance Company is opposing it. This Court called the Regional Manager of the Company. He stated that on receipt of the notices of the case the Company engaged the Advocates and instructed them to contest the same on merits. The Regional Manager of the Company stands to the stand that the Company contests the matter.

8. I find from the record of the case that in the motor accident the only son of the claimants petitioner, aged 9 years, has died. The averments made by the claimants petitioners in their application for restoration of the claim petition which was dismissed in default, stand uncontroverted as reply thereto has not been filed by the Company. That is also the position with regard to the application filed by the claimant petitioners under Section 5 of the Limitation Act. Thus, there is no dispute on the facts.

9. The petitioners engaged Sri Jag Mohan Singh, Advocate in the matter. The Advocate fell ill and remained confined to bed for a long period and ultimately died on 18th December, 1996. The petitioners came to know about the dismissal of the claim petition for non-prosecution on 8th of May, 1995. Sri Jag Mohan Singh, Advocate died of cancer. The petitioners have filed affidavit of Ramesh Dhabhai, Advocate. He made a statement on oath that Jag Mohan Singh, Advocate was his junior and he was

looking after this claim petition for petitioners. On 8th of May, 1995 he remained absent in the Court due to his illness. He remained ill for a long period and he did not give any information to the clients.

10. The Insurance Company has not denied these facts, how far it is justified or what *locus stand* it has to oppose this application orally. That apart, the Insurance Company is totally ignorant of the fact that in the claim petition now the limitation is not any barrier. The fresh claim petition can be filed. Opposition of such an application orally by the Insurance Company in the facts of this case appears to be a most cruel and inhuman act. The poor claimants petitioners have lost their only son, aged of 9 years in the accident and still the Insurance Company is opposing the application. The Insurance Company has also failed to appreciate that the provisions of the C.P.C. are not strictly applicable to the proceedings before the learned Tribunal.

11. Motor Vehicles Act, 1988 is a benevolent piece of legislation, which is enacted keeping in view socio-economic problems and difficulties.

12. The learned Tribunal has also acted highly arbitrarily, cruelly and inhumanly in the matter. It has failed to draw the distinction in the cases of the nature relating to the property or other rights and the cases where poor parents filed a claim petition for compensation for the loss of life of their only son aged 9 years in a motor vehicle accident.

13. It is unfortunate that our judicial officers do not read the statutory provisions as well as case laws. Otherwise this order would not have been passed by him in the matter. The provisions for restoration of the matter dismissed in default are to be liberally construed. The reference here may have to the decision of the Hon'ble Supreme Court in the case of *G. P. Srivastava v. R. K. Rayzada*,¹ This was the case in connection with the Order 9, Rule 13 of the Civil Procedure Code. The Court held that expression ".....was prevented by sufficient cause from appearing" must be liberally construed where defense is reasonable, defendant approaches the Court for setting aside of the *ex parte* decree within statutory period, non-appearance is not *mala fide* or intentional. The Courts have wide discretion and the expression must be construed as elastic expression and no hard and fast guide line can be prescribed. The Court has further held that the claim of sickness made for setting aside of the *ex parte* decree cannot be rejected merely because the medical certificate was obtained from a private paractitioner and not from a Government Doctor. Even where the defendant found to be negligent he may be compensated by the costs. A narrow and technical approach of

the Court leads unnecessary prolongation of the matter. The justice can only be achieved in case defendant is allowed to bring his case within reasonable time.

14. The learned trial Court has gone altogether on technical approach which is against the basic principles to do justice in between the parties and have a justice oriented approach more so in the motor vehicle claim cases. He started to find fault with the poor claimants that date of death was not given, the date on which the Advocate fell ill was not mentioned, the Advocate's ailment which he suffered, was not given, for what period he suffered illness was not given. The substance is that the Advocate was ill, which is not in dispute, on the date on which the matter was dismissed in default. The poor claimants had engaged the Advocate and they are not unreasonable in their approach to feel saved and free in his hands.

15. The averments made in the affidavit are not controverted and thus they are to be accepted. Otherwise also on each and every date it was not expected from the claimants to remain present in the Tribunal. Their role comes only when the pleadings are to be prepared and produced and for recording of their statements. I am satisfied from the facts of this case that stage was not reached. In case the order of the learned trial Court is allowed to stand it will result failure of justice to these poor claimants who have lost their only son aged 9 years in the motor vehicle accident. Law is meant for doing justice in between the parties. Procedural law is handmade of justice and reasonable claim of the claimants is thrown out of the Court without adjudication, it will be travesty of justice.

16. As a result of the aforesaid discussion, this writ petition succeeds and the same is allowed. The orders dated 8th of May, 1999 and 13th of September, 2001 of the learned Judge, Motor Accident Claims Tribunal Kekri are quashed and set aside and the Motor Accident Claim Case No. 24/1994 is restored to its original number.

17. The learned trial Court is directed to pass forthwith the order under Section 140 of the Act, 1988, if it is already not passed, and further decide the claim petition within a period of six months from the date of receipt of the copy of this order.

18. Where the learned Tribunal decides to award the interim compensation to the claimants the whole amount thereof is to be kept in the FDR in any Nationalized Bank and the monthly interest accrued thereon is to be paid to the claimants.

19. It is a fit case where the cost is to be awarded to the claimants petitioners against the Insurance Company as it was a just and reasonable case where the Insurance

Company should not have opposed the application and rather it should have submitted that it has no objection in restoration thereof. Not only this even before this Court this writ petition has been opposed. The poor claimants, who have lost their son aged 9 years, have to bear heavy litigation expenses.

20. In these circumstances, the Insurance Company is directed to pay Rupees 5000/- as cost of the writ petition to the claimants petitioners. This amount of costs is to be paid personally to the petitioner No. 1 by Account Payee Cheque/DD/Pay Order.

Petition allowed.

Cases Referred.

1. 2000 (3) SCC 54: (AIR 2000 SC 1221)