

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.58 of 2024

Sri Samir Sarkar

---Appellant(s)

Versus

Smt. Kabita Rani Rabi Das and Anr.

----Respondent(s)

For Appellant(s)	:	Mr. C. S. Sinha, Adv.
For Respondent(s)	:	Mr. K. Roy, Adv. Mr. B. Majumder, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

20/11/2024

Learned counsel Mr. C. S. Sinha is present for the appellant. Learned Counsel Mr. K. Roy is present for the claimant-respondent No.1 and Mr. B. Majumder, Learned counsel is present on behalf of the respondent No.2.

This appeal is preferred by the appellant under Section 173 of MV Act challenging the judgment and award dated 22.01.2020 delivered by Learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in connection with Case No.T.S(MAC) 223 of 2016.

In course of hearing Learned counsel appearing for the claimant-respondent No.1 first of all drawn the attention of this court that the present appeal is not maintainable and in course of hearing he referred para No.6 of the memo of appeal and submitted that challenging the said judgment the present appellant also preferred another appeal before this High Court vide Appeal No.MAC APP No.19 of 2020. But on 17.12.2020 this appeal was dismissed for non-prosecution and Learned counsel further submitted that the appellant did not take recourse of the provision of Order XLI Rule 19 of CPC and as such this present appeal is not maintainable. Learned counsel for the Insurance Company urged for passing appropriate

order. But Learned counsel for the appellant failed to counter the submission made by Learned counsel appearing for the claimant-respondent.

I have heard both the sides and also perused the judgment and award delivered by Learned Tribunal below. By the said judgment/award dated 22.01.2020 Learned Tribunal awarded compensation amounting to Rs.15,30,800/- along with 9% interest p.a. from the date of filing the claim petition i.e. 06.10.2016 till the payment is made in favour of the claimant-respondent and fastened the liability of payment of compensation upon OP No.1 i.e. the present appellant herein.

I have also perused the order of the High Court dated 17.12.2020 [Annexure-3 to this petition] which runs as follows:

"From the Registry Note dated 07.12.2020 it reveals that the appellant did not take any steps in respect of issuance of notice upon both the respondents till date. As such the matter has been placed under heading "Non Prosecution". Accordingly, the instant appeal stands dismissed for non-prosecution and thus disposed of."

From the said order it appears that the earlier appeal preferred by the present appellant was dismissed for non-prosecution and was disposed of.

Order XLI Rule 19 prescribes the procedure for re-admission of the appeal dismissed for default which provides as under:

"19. Readmission of appeal dismissed for default.- Where an appeal is dismissed under Rule 11, sub-rule (2), or Rule 17, the appellant may apply to the Appellant Court for the readmission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit."

Here in the given case it appears that after dismissal of the appeal No.MAC APP No.19 of 2020 vide order dated 17.12.2020 no step was taken by the present appellant for re-admission of the appeal or for restoration of the appeal which was dismissed for non-prosecution. Situated thus, at this stage there is no scope to

proceed further with this present appeal until and unless that order dated 17.12.2020 passed by this High Court in MAC APP No.19 of 2020 is modified or set aside.

In view of the above, the present appeal stands dismissed being not maintainable as per law.

Pending application(s) if any, stands disposed of.

Send down the LCR along with a copy of this order.

JUDGE

**MOUMITA
DATTA**

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