

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

9 FIRST APPEAL NO. 1909 OF 2012

GULAB JANARDHAN CHAVAN

VERSUS

LATABAI MADHAV SARODE AND ORS

...

Advocate for Appellant : Mr. Salunke Sudarshan J

Advocate for Respondents 1 to 4 : Mr. P N Kalani

Advocate for Respondent No.5 : Mr. V R Mundada

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 29th September, 2015

PER COURT :

1. Mr. Salunke, the learned counsel for the appellant submits that initially, the claim petition was filed by the respondents under section 163-A of the Motor Vehicles Act. The owner and insurance company were jointly and severally liable to pay compensation amount. The insurance company filed an appeal. This court remitted the matter back to the tribunal by allowing amendment in the claim petition i.e. converting the claim petition from under section 163A to under section 166 of the Motor Vehicles Act. According to the learned counsel for the petitioner, the petitioner was not appearing in the said appeal

filed by the insurance company before this Court. Even after remand of the matter, no notice was served on the petitioner. In absence of the petitioner, the present proceedings are decided. The learned counsel submits that opportunity be given to the petitioner to adduce evidence and put forth his case.

2. Mr. Kalani, the learned counsel submits that in an appeal filed by the Insurance company, this Court had remitted the matter and had given date of appearance before the tribunal. The present appellant did not appear before the tribunal. As such, now the appellant cannot claim any benefit for his absence.

3. Mr. Mundada, the learned counsel submits that the insurance company has been rightly exonerated.

4. I have considered the submissions.

5. From the order passed by this Court in earlier appeal filed by the insurance company, it is manifest that nobody was appearing for the present appellant in the said proceedings and the matter was remitted back to the tribunal. The claimant was allowed

to convert the said proceedings from section 163A to section 166 of the Motor Vehicles Act.

6. After remand of the matter, the tribunal did not issue any notice to the appellant, possibly because this court had given a date for appearance. However, it needs to be considered that the present appellant did not appear in the proceedings filed by the insurance company before this Court. The matter was remitted in the absence of the appellant as the appellant was absent. To adhere to the principles of natural justice, notice ought to have been given to the present appellant, although it was duty of the present appellant to appear before this Court in an appeal filed by the insurance company challenging the impugned judgment and award.

7. Considering the above, one more opportunity needs to be given to the appellant but at the same time, the appellant deserves to be mulct with costs for not appearing in this Court in the appeal filed by the insurance company because of which, the appealant is again required to be given one more opportunity.

8. In the light of above, impugned judgment and award passed by the tribunal is quashed and set aside.

9. The matter is remitted back to the tribunal. The parties to appear before the tribunal on 29th October, 2015.

10. As the date is already given by this Court and all the parties are appearing before this Court, it will not be necessary for the tribunal to issue any fresh notice.

11. The parties are allowed to adduce further evidence.

12. The appellant shall deposit cost of Rs.25,000/- on or before 29th October, 2015. Deposit of cost is condition precedent.

13. In case the cost is deposited, the claimants are entitled to withdraw the same.

14. In case the cost is deposited, then the tribunal shall endeavour to dispose of the proceedings,

expeditiously, preferably within nine months from the date of appearance .

15. Record and proceedings be sent back immediately.

16. The statutory amount deposited by the appellant shall be transmitted to the tribunal. The tribunal will pass further orders with regard to the disbursement of the said amount in tune with the judgment delivered by it.

17. The first appeal is accordingly disposed of.

(S. V. GANGAPURWALA, J.)

JPC