

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.M. (M) No.364/2015 & C.M. No.7768/2015**

Decided on : 1st July, 2015

BEENA AGGARWAL & ORS. Petitioners

Through: Ms. Neha Kapoor, Advocate.

Versus

DEEPAK ASWANI & ORS. Respondents

Through: Mr. Pradeep Gaur, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a petition filed by the petitioners by virtue of which a prayer for setting aside the order dated 21.10.2014 and 24.3.2015 has been prayed for. It has been further prayed that the petitioners be permitted to contest the application of respondent No.4/insurance company for reopening of the evidence or in the alternative, the petitioners be permitted to cross-examine the witness, R4W1 i.e. Atul Kapur, Chartered Accountant whose investigation report regarding income of the deceased was taken on record vide order dated 21.10.2014.

2. I have heard the learned counsel for the parties and have also gone through the trial court record.

3. This is a claim petition under Motor Vehicles Act which has been pending before the learned trial court for the last more than a decade.

Without going into the facts of the case, it may be pertinent here to mention that vide order dated 21.10.2014, the learned Presiding Officer, MACT (South-East) allowed the application of respondent Nos.1 to 3 setting aside the ex parte order dated 30.8.2014 against the said respondents. He also allowed the application of respondent No.4/Insurance Company for reopening of the respondent's evidence on the ground that the driver, Deepak Aswani, who was driving the offending vehicle which had caused the accident, has been discharged in Criminal Revision by the court of District & Sessions Judge, South-East. The learned counsel for respondent No.4 was also permitted to file an investigation report on the point of income of the deceased and was permitted to adduce evidence in this regard.

4. Vide order dated 24.3.2015 it has been recorded that the learned counsel for the petitioner, without inspection of the record, had been aggressively requesting the learned Presiding Officer to decide the application for recall of evidence while as that stood already allowed. The factum of the stay application of respondent No.4 under Section 151 CPC for reopening of the respondent's evidence was allowed vide order dated 21.10.2014 and it was contended by the learned counsel that though the application was allowed on the said date; however, the reply to the stay application was accepted by the court even after the application having been allowed and therefore, it was in her knowledge that the application is still pending and therefore, she wants setting aside of the said order also.

5. A perusal of the order sheets from 20.1.2014 clearly show that the insurance company was at fault inasmuch as it was not able to produce evidence and on certain occasions it was not represented. In order to see the conduct of the insurance company it may be pertinent here to mention that on 20.1.2014, the same learned Presiding Officer had taken note of the fact that despite repeated opportunities, the insurance company has not led evidence and therefore its evidence was closed. The matter was adjourned to 17.2.2014.

6. Thereafter, multiple adjournments were taken at the instance of both the parties on various dates like 17.2.2014, 27.3.2014, 3.4.2014, 24.4.2014, 27.5.2014, 6.6.2014, 14.7.2014 and 6.8.2014. On 6.8.2014, the matter got transferred to another court which adjourned the matter firstly to 30.8.2014 and thereafter for final arguments to 27.9.2014 & 21.10.2014. On 21.10.2014, that is the crucial date when an application of respondent No.4 under Section 151 CPC was allowed in which it was mentioned that the driver Deepak Aswani has been discharged by the criminal revision court and that order be taken on record and further respondent No.4 wanted to place on record the investigation report with regard to the income of the deceased which was also allowed by the learned Presiding Officer and the matter was adjourned to 8.12.2014 for respondent's additional evidence and arguments.

7. In my considered opinion, it is at this stage, the learned Presiding Officer has committed an impropriety in procedure in not following the

principles of natural justice by allowing the application for production of evidence without giving time to file the reply to the petitioners. The learned Presiding Officer has passed an order setting the clock back to the month of January, 2014 by reopening the evidence of respondent No.4 by permitting them to place on record an investigation report which is in the nature of a self-serving document and then also permitting them to produce evidence to prove the said document. This ought not to have been done unilaterally by the learned Presiding Officer without giving an opportunity to the learned counsel for the petitioner for the purpose of filing the reply.

8. It is this grievance which is haunting the present petitioner before this court. I feel that before allowing the application of respondent No.4 so as to permit them to adduce further evidence despite the closure of their earlier evidence and permitting them to prove their investigation report an opportunity ought to have been given by the Presiding Officer to file the reply and contest the application. Since this has not been done a procedure which is grossly improper has been followed by the learned counsel for the respondent. This ground in itself deserves setting aside of the order dated 21.10.2014.

9. I feel that reply of the petitioner was taken by the Reader by mistake on 8.12.2014 and when the Presiding Officer was on leave. Merely taking the reply inadvertently will not legalize something. The R4W1 Atul Kapur, Chartered Accountant, has already been examined on 24.03.2015.

10. In view of the aforesaid circumstances, I feel that interest of justice would be sub-served by permitting the Presiding Officer to decide the application of respondent No.4 for adducing of additional evidence afresh after taking the reply of the petitioner into consideration and after giving an opportunity of being heard to both the parties. In case the application of respondent No.4 is allowed then the examination-in-chief of R4W1 is already on record and in that event subject to such terms and conditions as the MACT court may like to fix, an opportunity of being cross-examined shall be given to the petitioners which will sub-serve the interest of justice. With these directions, the present petition stands allowed. Let the parties appear before the learned Presiding Officer on 20th July, 2015.

11. *Dasti.*

V.K. SHALI, J.

JULY 01, 2015
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