

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 245 OF 2016**

Reliance General Insurance, 4th floor,
Mathias Plaza, Above Canara Bank, Panaji,
Goa.

Represented through the Manager of
Reliance General Insurance.

.... Petitioner

Versus

1. Mr. Pundalik Gurudas Ekawade, age 38 years, son of late Shri Gurudas P. Ekawade, Private service, married, presently residing at Flat No. F-2, Venus Residency, Morgod Wadda, Above Shirodkar Wines, Goa Velha and his wife,
2. Mrs. Daisy Pundalik Ekawade, age 31 years, w/o Shri Pundalik G. Ekawade, presently residing at Flat No. F-2, Venus Residency, Morgod Wadda, Above Shirodkar Wines, Goa Velha. Both Indian National claiming through deceased father/father-in-law, late Mr. Gurudas P. Ekawade.

All the parties are permanent resident of H. No. 211, Deul Wada, Kudnem-Goa.

3. Mr. Shripad Zuwarkar, H. No. 597-B, Near Fish Market, Goa Velha (P.O.), Tiswadi.
4. Mr. Gajendra Kumar, native of Jhalandhar, Kolva, Madhapuram, Bihar, presently residing at c/o Prabhudas, Indiranagar, Chimble, Goa.

.... Respondents

Mr. Suraj Rohidas Naik, Advocate for the Petitioner.

Mr. Sagar Dhargalkar, Advocate for Respondent Nos. 1 and 2.

CORAM:- C.V. BHADANG, J.

DATE:- 22nd MARCH, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Dhargalkar, learned Counsel waives service on behalf of respondent nos. 1 and 2 (who are the only contesting respondents). Respondent no. 3 is served, but there is no appearance. The notice to respondent no. 4, who was ex-parte before the learned Tribunal, is hereby dispensed with. The petition is taken up for final disposal with consent of the parties.

2. By this petition, the petitioner, which is the original respondent no. 3 before the Motor Accident Claims Tribunal, is challenging the order dated 11.08.2015, by which application filed by the petitioner for taking the written statement on record has been rejected.

3. The brief facts are that the respondent nos. 1 and 2, who are the original claimants have filed Claim Petition No.

15/2013, which is pending before the Motor Accident Claims Tribunal, Panaji, Goa. The respondent nos. 1 and 2 are seeking compensation of Rs.2,00,000/- for the death of one Gurudas Ekawade in a vehicular accident. It appears that an ex-parte order was passed against the present petitioner on 25.06.2013. However, on an application filed by the petitioner and a no objection given by the respondent nos. 1 and 2, the said order was set aside on 09.12.2014. Thereafter, the petition was posted before the Lok Adalat on various dates with a view to explore possibility of settlement, which eventually did not materialise. On 05.03.2015, application (Exhibit D-20) was filed by the petitioner for taking the written statement on record. It appears that the said application remained pending. On 13.06.2015 as there was no possibility of settlement, the petition was fixed for evidence in which on behalf of respondent nos. 1 and 2, three witnesses were examined. On 11.08.2015, the learned Tribunal passed an order thereby rejecting the prayer of the petitioner for permitting it to place written statement on record. The learned Presiding Officer has found that the petitioner had failed to file written statement on 06.01.2015 or on 03.02.2015 and the petitioner has been negligent in pursuing the matter. The learned Presiding Officer

was of the view that no leniency could be shown to the petitioner.

4. I have heard the learned Counsel for the petitioner and respondent nos. 1 and 2. With the assistance of the learned Counsel for the parties, I have perused the record.

5. The learned Counsel for the petitioner submits that although, there is some delay and lapse on the part of the petitioner in filing the written statement, it is pointed out that on 05.03.2015 itself, an application (Exhibit D-20) was filed for placing written statement on record. Subsequently, the petition was repeatedly placed before the Lok Adalat in order to explore the possibility of settlement, which eventually did not materialise. It is submitted that the petitioner is willing to abide by any condition, imposed by this Court, while permitting the petitioner to contest the claim petition. The learned Counsel on instructions, submits that the petitioner shall file an application under Section 170 of the Motor Vehicle Act alongwith the written statement.

6. The learned Counsel for respondent nos. 1 and 2 has

strenuously urged that no case for setting aside the order is made out. The learned Counsel has taken me through the order, in order to demonstrate that the petitioner has been negligent, in filing the written statement. The learned Counsel was at pains to point out that on 09.12.2014, no objection was given on behalf of respondent nos. 1 and 2 for setting aside the ex-parte order. It is submitted that thereafter also, various opportunities were granted, however, the petitioner did not file the written statement.

7. I have considered the rival circumstances and the submissions made. It is true that the petitioner has not acted with the expected diligence. Nonetheless, it appears that on 09.12.2014, there were two applications filed by the petitioner being Exhibits 18 and 19, which were allowed and the petitioner was permitted to file the written statement. It further appears that on 05.03.2015 an application (Exhibit D-20) was filed alongwith the written statement and the matter was fixed for say of the respondent nos. 1 and 2 on the said application. Thereafter from 28.03.2015 till 13.06.2015, the petition was placed before the Lok Adalat on various occasions. Ultimately, as the amicable settlement did not materialise, the petition was

fixed for evidence/hearing on 14.07.2015.

8. Considering the overall circumstances and the fact that the presence of the Insurance Company would also enure to the benefit of respondent nos. 1 and 2 as it would facilitate execution of the award, if ultimately passed, I find in the larger interest of justice, the petitioner can be allowed to place the written statement on record and to take part in the proceedings, subject to the condition of payment of costs. I am conscious of the fact that in the meantime respondent nos. 1 and 2 have already led evidence and the witnesses will have to be recalled. The learned Counsel for the petitioner submits that he intends to recall only Mr. Pundalik Ekawade (AW-1) and Mr. Vishant Ekawade (AW-2).

9. In such circumstances, the following order is passed:
- (a) The petition is allowed.
 - (b) The impugned order dated 11.08.2015 is hereby quashed and set aside.
 - (c) The applications at Exhibits 19 and 20 stand allowed, subject to payment of costs of Rs.15,000/- to be paid to respondent nos. 1

and 2, within a period of one week from today.

(d) The learned Tribunal shall accordingly take on record the written statement filed by the petitioner.

(e) The learned Tribunal shall also permit the petitioner to cross examine Mr. Pundalik Ekawade (AW-1) and Mr. Vishant Ekawade (AW-2).

(f) Payment of costs is a condition precedent to the permission for placing the written statement on record, taking part in the proceedings and recall and cross-examination of witnesses, Mr. Pundalik Ekawade (AW-1) and Mr. Vishant Ekawade (AW-2).

(g) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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