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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 23rd August, 2017

+ **MAC.APP. 383/2016**

RAJ RANI & ORS.

..... Appellants

Through: **Mr. Anshuman Bal, Advocate**

versus

**UNITED INDIA INSURANCE COMPANY LIMITED &
ORS.**

..... Respondents

Through: **Mr. Sankar N. Sinha, Advocate
for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Kapil Dev, husband of the first appellant and son of the other two appellants died in a motor vehicular accident that occurred on 06.10.2014. An accident claim case seeking compensation was instituted on their behalf through counsel on 27.10.2014 before the tribunal on the averments that the accident had occurred due to negligent driving of truck bearing registration No.RJ-01-GB-6533 by the first respondent, it being registered in the name of the second respondent and insured against third party risk with the third respondent.

2. The Motor Accident Claims Tribunal (the tribunal), by order dated 27.10.2014, issued notices to all the said respondents. The

proceedings in the case were, however, closed by order dated 12.08.2015. An application for revival of the proceedings moved on 25.08.2015 resulted in fresh notices being issued. The said application for reasons which cannot be fathomed was withdrawn curiously by the counsel on 12.10.2015. On 27.11.2015, another application was moved for revival which was dismissed by the tribunal by order dated 11.01.2016. It is the said order which is assailed by the appeal at hand.

3. On notice, only the insurance company (third respondent before the tribunal) has appeared, there being no presence on behalf of other respondents at the stage of hearing though they have been duly served and had earlier appeared on 21.12.2016 through counsel.

4. The proceedings recorded by the tribunal on the file pertaining to the claim petition of the appellants have left the court deeply disturbed. The manner in which the claim petition in a fatal accident case was handled has been most insensitive and, therefore, a cause for concern. This can be best demonstrated by quoting verbatim all the proceedings on the file from beginning till end, such that this kind of handling does not become a model to follow in future. They are set out as under:-

“27.10.2014

Fresh petition received by way of assignment. Be checked and registered.

Present: Mr. Prahlad, Advocate alongwith father of deceased.

I have perused the contents of the petition and the accompanying documents.

Issue notice of the petition to all the respondents on PF/RC/AD and courier for 07.01.2015.”

“07.01.2015

Present: Mr. Prahlad Kumar, counsel for petitioner.

R3 is absent despite service as per report over process perused.

R1 and R2 have remained unserved.

Both R1 and R2 be served afresh on PF/RC/AD.

Issue show cause notice upon Chief Manager (Legal) of insurance company as to why company be not proceeded for failure to come up despite being informed as per mandate of law.

Be listed on 21.03.2015.”

“21.03.2015

Present : None for the petitioner despite calls.

R-1 and R-2 have remained unserved.

Sh. V.P. Gore Manager Incharge alongwith counsel Sh. Vinod Kaul for the insurance company.

Vakalatnama filed on behalf of respondent no.3 and an application filed praying for recalling the show cause notice. Reasons cited in the application. In view application, the application stands allowed. The order to that extend is hereby recalled.

The WS sought to be placed on record cannot be considered. The insurance company is directed to file WS within 40 days, failing which company shall be burdened of

Rs.5000/-. Respondent no.1 and 2 be served afresh by way of PF/RC returnable by 27.05.2015.”

“27.05.2015

Pr: SH. Prahlad Kumar, counsel for the petitioner.

Counsel for R1 and R2.

WS is already filed on 22.05.15. Copy supplied.

Sh. Vinod Kaul, counsel for R3.

WS/objections filed on behalf of R3. Copy provided.

Compliance not made by the petitioners. Let requisite documents/bills of the criminal case record be supplied to the insurance company within a month. Be listed for 12.08.15.”

“12.8.15

Pr. Sh. Prahlad Kumar, proxy counsel for petitioner.

It is 02:20 pm.

Sh. Viold Kaul, Ld. Counsel for insurance company.

The previous are not complied with, nor the petitioners have appeared since morning. Counsel for petitioners states that they have not contacted him. Under such circumstances, this court does not deem it appropriate to adjourn the matter any further.

Since petitioners have not been appeared, the petition and resultant proceedings stand closed by order.

File be consigned to the record room.”

“27.08.2015

File taken up today as brought from record room on the application of petitioner/applicant.

Present: Mr. Shri Niwas, Father of deceased alongwith counsel.

Issue notice of the application upon all the respondents on filing of PF/RC/AD returnable by 22.09.2015.”

“22.09.2015

Present: Mr. Dheeraj Kulshrestha, Counsel alongwith claimant.

The report qua R1 & R2 not received back. Issue fresh notice of application be issued upon the R1 & R2 to be served through their Advocate as well.

None for the insurance company despite service.

Be put up on 12.10.2015.”

“12.10.2015

Present: Mr. Dheeraj Kulshrestha, counsel alongwith applicant no.3.

Mr. Aman Singh, counsel for R1 and R2.

Mr. Vinod Kaul, counsel for R3.

On request of applicant, the application stands disposed off as having withdrawn with a liberty to file afresh, if any.

File be consigned to record room.”

“11.01.2016

Present: Mr. Dheeraj Kulshrestha, counsel alongwith P1 and P3.

Mr. Aman Singh, counsel alongwith R1 and R2.

None for R3.

I have considered the application filed on 27.11.15 on behalf of applicants/LRs of deceased for setting aside the order dated 12.8.15.

It is pertinent to state that an application with similar request filed on 27.8.15 had stood dismissed on 12.10.15. The present application does not cite the plausible explanation whatsoever for non complying the orders dated 27.5.15. The application is cryptic and the reasons are not appealing enough to be entertained.

Dismissed.

File be consigned to record room.”

5. Noticeably, in order dated 27.05.2015, the Tribunal would hold the petitioners responsible for non-compliance. There is nothing in the orders preceding the said order sheet indicating any directions to the petitioners for which they were duty bound to comply. Some *cue* can be taken from what followed in the order dated 27.05.2015 where the Tribunal directed supply of “documents/bills of the criminal case record” to the insurance company. The claimants were obliged only to supply copy of the petition and documents filed therewith. It appears the documents referred to were yet to be brought on record.

6. In a jurisdiction of this nature, having regard to the letter and spirit of the Delhi Motor Accident Claims Tribunal Rules, 2008, it was the obligation of the Tribunal to take all necessary steps to bring on record such documents as would have a bearing on the award of just compensation, if a case to that end had been made out. For inability or

failure on the part of the claimants, they could not be penalized by the proceedings being closed in the manner done on 12.08.2015. The order dated 12.08.2015 defies logic and baffles one totally. It is neither an order dismissing the petition nor an order adjudicating upon it. It is an order which does not indicate the fate of the claim case that had been brought to the Tribunal.

7. Be that as it may, the claimants were put to the unnecessary rigor of moving another application for revival and thereafter go for yet another round of attempting service on the opposite party, thereby adding to their agony.

8. It is not understandable as to why the counsel for the appellant would withdraw the application on 12.10.2015. There was no conceivable reason for such withdrawal and, therefore, such request could not have been blindly accepted.

9. When, another application came to be moved seeking revival, the reasons set out in the order dated 11.01.2016 to dismiss the said application are even more weird. The previous application had not been “dismissed” on merits so as to preclude a fresh application being moved. Rather, while withdrawing the previous application, it had been indicated by the counsel that he would be moving a fresh application. Therefore, the dismissal of the second application against such backdrop was most unjust and unfair.

10. The appeal is allowed. The proceedings arising out of the claim petition are revived on the file of the claims tribunal.

11. The parties are directed to appear before the tribunal on 21st September, 2017 for further proceedings in accordance with law.

12. Lest such procedure were to be emulated in other proceedings, a copy of this order shall be circulated to all the Claims Tribunal in Delhi through the respective District Judges.

13. *Dasti.*

AUGUST 23, 2017
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R.K.GAUBA, J.