

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11298 OF 2015

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ANITA VILAS BAGUL AND OTHERS.
VERSUS
BABULAL ABDUL HAFIZ PATHAN AND OTHERS.

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Advocate for Petitioners : Mr. Khedkar Amol P.
Advocate for Respondent No.3 : Mr S R Bodade

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CORAM : V.K. JADHAV, J.

Dated: March 07, 2018

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PER COURT :-

1. Though, respondent no.1 is served through paper publication and respondent No.2(i) served, none appears for them. However, considering the plight of the petitioner/original claimants, petition is heard finally with the consent of the petitioner and learned counsel appearing for the respondent/insurer, at admission stage.

2. Brief facts, giving rise to the present writ petition are as follows :-

a] The petitioners had filed Motor Accident Claim Petition No.436/2007 before the Motor Accident Claims

aaa/-

Tribunal, Aurangabad for compensation on account of death of husband of petitioner no.1. The learned Chairman, Motor accident Claims Tribunal, Aurangabad, by order dated 22.11.2012 dismissed the said claim petition in default. Consequently, the petitioners/original claimants filed MARJI (MACP) No.20/2014 for restoration of the Motor Accident Claim Petition No.436/2007. It has been contended in the said MARJI 20/2014 that the petitioner/claimant no.1 is residing with her minor children in Wardha District at her parental place after accidental death of her husband. However, at the time of accidental death of her husband she was staying at Aurangabad alongwith her husband and in laws claimant nos. 4 and 5. Thus, she could not attend the hearings of the claim petition and also could not contact her advocate. The petitioners/claimant nos. 4 and 5 are the old aged persons, and, due to their old age they could not attend the court dates and even their Advocate had filed no instruction purshis in the Court. It has been also contended that the petitioners/original claimants 1 to 3

are residing in the remote area of the Vardha District.

b] Respondent No.2 owner has strongly resisted the said application by filing his say at exh.7. He has denied all the averments made in the application. It has been contended that there are no lawful and justifiable grounds to restore the application.

c] Respondent No.3 insurer has also resisted the application by filing say at exh.11. It has been stated that the petitioners/claimants are negligent in prosecuting the claim petition and though respondent no.3 has filed written statement long back and matter was fixed for evidence time to time, the petitioners/claimants failed to attend the dates of hearing. There are no satisfactory reasons given for restoration of the claim petition and, as such, the same is liable to be dismissed. The learned Member of the Tribunal has framed the point to the effect that 'Whether the claimants have shown just cause for their absence and recorded findings in the negative and

accordingly dismissed the said application by impugned order dated 8.7.2015. Hence, this writ petition.

3. Learned counsel for the petitioners/original claimants submits that, in terms of the provisions of Section 166 of the Motor Vehicles Act, 1988 read with Rule 259 of the Maharashtra Motor Vehicles Rules, 1989 if the tribunal has not summarily dismissed the claim petition and notices have been issued against the respondents, then, claim petition cannot be dismissed in default. Learned counsel submits that, the Tribunal in the initial order also observed that the claim petition already dismissed against respondent no.1-driver and as such, even if the claim petition is restored as against respondent no.2 (owner), and respondent no.3 (insurer), no effective award could be passed against them since respondent no.2 owner is vicariously liable to pay the compensation. Learned counsel submits that, entire approach of the tribunal is erroneous. Whether presence of the driver in the claim petition is necessary or not can be decided after considering the pleadings

and evidence adduced by the parties to the claim petition. Learned counsel for the petitioners/original claimants submits that, otherwise, the claimants have well explained their non-appearance before the Tribunal when the matter was called out for hearing, however, the same was not considered and the learned Member of the Motor Accident Claims Tribunal has rejected the M.A.R.J.I. filed for restoration of the claim petition.

4. Learned counsel for the petitioners/original claimants in order to substantiate his contentions placed his reliance on following cases :-

- I. United India Insurance Company Limited Vs. Additional District, Sessions Judge, Muzaffarnagar, reported in Lex (ALL) 2003 2 85.
- II. State of Punjab and others Vs. Ishar Singh and others reported in (2002) 10 Supreme Court Cases 674.

5. Learned counsel for respondent/insurer submits that, though the claim petition is of the year 2007, petitioners/claimants consistently remained absent before the Tribunal. Even, though in the year 2012 due

to absence of the petitioners/claimants the learned Chairman of the Tribunal constrained to dismiss the petition in default. The petitioners/claimants even could not explain their absence before the tribunal satisfactory and, as such, the tribunal has rightly dismissed the MARJI filed for restoration of the Motor Accident Claim Petition No.436/2007. There is no substance in this writ petition and writ petition is liable to be dismissed. Learned counsel, in the alternate submits that, if, this court is inclined to restore the claim petition, then, it may be observed that, for this period, the petitioners/claimants would not be entitled for interest.

6. On careful perusal of the initial order passed below exh.1 dated 22.11.2012, it appears that the learned Chairman of the Motor accident Claims Tribunal, Aurangabad has dismissed the claim petition in default. In terms of the provisions of section 166 of the Motor Vehicles Act, 1988, an application for compensation arising out of an accident of the nature

specified in sub-section (1) of section 165 may be made-

- a] by a person who has sustained injury; or
- b] by an owner of the property, or
- c] where death has resulted from the accident, by all or any of the legal representatives of the deceased.

Sub-section (3) was omitted by Act of 54 of 1994 and prior to its omission sub-section (3) to section 166 prescribes that 'no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident and the claim Tribunal may entertain the application after expiry of the said period of six months, but not later than 12 months, if it is satisfied that the applicant was prevented from sufficient cause from making the application in time.' Subsection (4) of Section 166 also substituted by the Act of 54 of 1994 and in terms with the newly substituted subsection (4) the claims tribunal shall treat any report of the accident forwarded to it under sub-section (6) of Section 158 of the Motor Vehicles Act, as an application for compensation under this Act.

7. It is worth to be noted here that, by subsequent amendments, clause of limitation has been deleted and as such, the claim petition can be filed at any time and even the tribunal is empowered to treat any report of the accident forwarded to it by the concerned police station as an application for compensation under the act. In my considered opinion, such a claim petition, even if filed by the aggrieved person, cannot be dismissed in default.

8. On perusal of the Maharashtra Motor Vehicle Rules, 1989, particularly, rule No.258 and 259 those read as under :-

258. **Examination of applicant.** - On receipt of an application under Rule 254 the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing and shall be signed by the Member constituting the Claims Tribunal or, as the case may be, the Chairman.

259. **Summary disposal of application :-**

- (i) Any application for compensation received in Claims Tribunal shall be examined within 14 days from its receipt with a view to find out whether the same is in order. Any discrepancies or non-compliance with the statutory requirements may be notified as "Office objections" on the Notice Board of the Claims Tribunal, and the parties or the

Advocate concerned may be called upon to remove them, or to make their submissions in regard to the same within 14 days from the publication or display of the Notice, failing which the concerned parties/Advocate should be given to understand that the applications in question are liable to summary dismissal.

- (ii) The Claims Tribunal may, after considering the application and the statement of the applicant recorded under Rule 258 dismiss the application summarily, if for reasons to be recorded in writing, the Claims Tribunal is of the opinion that there are no sufficient grounds for proceeding therewith.

9. It appears that, on receipt of an application under Rule 254, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing and shall be signed by the Member or as the case may be the Chairman. In terms of provisions of Rule 259 which empowers the tribunal to dispose of the application summarily in terms of Clause (ii) of rule 259 of the Maharashtra Motor Vehicles Rules, 1989. Claims Tribunal, after considering the application and the statement of the applicant recorded under Rule 258 of the said Rules, dismiss the application summarily, if for reasons to be recorded in writing, the Claims Tribunal is of the opinion that there are no sufficient grounds for proceeding therewith.

10. In the instant case, Motor Accident Claims Tribunal has not summarily disposed of the application filed by the petitioners/claimants in terms with the provisions of Rule 259 clause (ii) and prefer to issue notice to the parties involved in the matter as contemplated under section 260 of the Rules, 1989. It appears that, there is no further provisions either in the Act or in the Rules to dismiss the Claim Petition in default or to dispose of the claim petition otherwise than under the provisions of section 168 of the Motor Vehicles Act, 1988, which contemplates the award of the Claims Tribunal.

11. In a case United India Insurance Co. Ltd. Vs. Additional District and Sessions Judge (supra), relied upon by the learned counsel for the petitioners, the High Court of Allahabad has taken a similar view by referring the rule no.206 of the Uttar Pradesh Motor Accident Claims Tribunal Rules,1967 which is similar to that of Rule nos. 258 and 259 of the Maharashtra Motor Vehicle Rules, 1989.

12. The learned Chairman of the Motor Accident Claims Tribunal, while dismissing the claim petition by passing the order below exh.1 dated 22.11.2012 in paragraph no.2 of the order also observed that since claim petition is already dismissed as against respondent no.1-driver, no effective award could be passed against the respondent no.2-owner who is vicariously liable for the act of his driver and as such, no purpose would be served, even if claim petition is not dismissed in default. It is to be observed here that, so far as impleadment of the driver of the offending vehicle is concerned, the Tribunal is vested with the discretion to pass award jointly and severally. It is well settled that, joint award need not always be passed. It has been also held in many cases that if the owner himself is available to defend the case of the driver to escape from the case then, non impleadment of the driver in the claim petition cannot deprive their rights to claim the compensation. It is thus for the tribunal to consider the case after recording the evidence whether the absence of driver in a case would be fatal for the

claimants to claim the compensation.

13. In view of the above discussion, the impugned order is thus liable to be quashed and set aside and Motor accident Claim Petition No.436/2007 deserves to be restored to its original number. Since the claim petition is old one, it would be just and proper if directions are given to the Motor Accident Claims Tribunal, Aurangabad for expeditious disposal of the claim petition. Hence, following order.

ORDER

- I. Writ Petition is hereby allowed.
- II. The order passed by the Member, Motor Accident Claims Tribunal, Aurangabad below M.A.R.J.I. No.20/2014 dated 8.7.2015 are hereby quashed and set aside.
- III. MARJI No.20/2014 is hereby allowed in terms of its prayer clauses with following directions :-
 - a] Motor Accident Claims Petition No.436 of 2007 be restored to its original number.

- b] The petitioners/claimants as well as the respondents are at liberty to adduce oral and documentary evidence in support of their rival contentions.
 - c] After giving an opportunity of being heard to both the sides, the Tribunal shall dispose of the claim petition, as expeditiously as possible, preferably within a period of SIX MONTHS from the date of this order.
- IV. The respondent/insurer is at liberty to raise a point about the interest and the Tribunal may pass the appropriate order about the interest, if decided to grant compensation to the claimants.
- V. Writ Petition is accordingly disposed of. Pending Civil Application, if any, also stands disposed of.

(V.K. JADHAV)
JUDGE

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