Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 314 OF 2011

Devkar Bistir Govari ... Applicant
Vs.
Pravinbhai Bhikaubhai Panwala & Ors. ... Respondents

Mr. S.S. Kothiya i/b. Mr. Shrishak Chavanke, Advocate for the applicant.
Ms. Varsha Chavan, Advocate for the respondent/insurance company.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **26th June, 2018.**

P.C.:

This Civil Revision Application is directed against the order dated 14th January, 2011 passed by the learned District Judge-1 and Member, Motor Accident Claims Tribunal, Palghar in Miscellaneous Application No. 95 of 2010 thereby rejecting the Application preferred by the applicant for setting aside the dismissal order dated 5th March, 2010 and for restoration of the proceedings to its original file.

2. The applicant is an injured person, who filed the Claim Application for compensation against the owner and driver of a tanker and the insurance company with whom the tanker was insured. The accident has taken place in the year 2005. In the Claim Application, only the insurance company was served and no

further steps were taken by the claimant, hence after giving sufficient time, the trial Court dismissed the Petition on 5th March, 2010. Thereafter the Application for setting aside the said order was made. The Tribunal was not satisfied with the reason given by the claimant and rejected the said Application.

3. The learned counsel for the applicant has submitted that the applicant is uneducated and belonged to Adivasi community and was not aware of the Court procedure. He entirely was dependent on his advocate who appeared for him before the Tribunal. The learned counsel has submitted that the matter was dismissed for want of prosecution for which the applicant cannot be held responsible. He further submitted that the applicant is an injured person and he is a driver. He sustained leg injury and suffered 27% permanent disability.

4. The learned counsel for the insurance company, while contesting this Application, has submitted that there was considerable delay in filing the Application for setting aside the dismissal order. The Application was rightly dismissed. The reasons given by the applicant in the Application for setting aside the

dismissal order are not good reasons and sufficient to condone delay and to allow the Application. The learned counsel submitted that there is nothing on record to show that the claimant has suffered 27% disability.

5. Heard the submissions. Perused the Application made by the applicant for setting aside the order of dismissal. In view of the submissions made by the parties and considering the condition of the claimant, the main Claim Application is to be restored. Hence, I pass following order:

(i) The order dated 14th January, 2011 is hereby set aside

(ii) Miscellaneous Application No. 95 of 2010 is restored to its original file with following conditions:

(a) The applicant/claimant shall take further steps in respect of service on other respondents. The insurance company waives service before the Tribunal;

(b) If the Claim Application is allowed and compensation is granted, then the claimant shall not claim 50% of the interest from the date of dismissal till 31st December, 2017;

(c) The Claim Application is to be expedited on or before 30th April, 2019.

6. Civil Revision Application is allowed.

(MRIDULA BHATKAR, J.)