

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

¹¹
sm 27.08.
2019

C.O. 36 of 2019

**Beauty Das & Ors
Versus
Pralay Saha & Anr.**

Mr. Subhasish Misra.
.....for the petitioners.

Affidavit of service filed in court today be kept on record.

By virtue of the impugned order, an application for review filed by the petitioners, being the next of kin of the victim of an accident, was rejected. Initially a compensation case was filed by the petitioners under Section 166 of the Motor Vehicles Act. At the time of the cross examination of the petitioners' witness, a question was put to the petitioners' witnesses as to non-production of age proof documents of the deceased. Thereafter, at the juncture when such cross examination was over, the petitioners put in deficit court fees, along with relevant documents to prove the age of the deceased at the time of his death, along with a firisti. However, such firisti and documents were not accompanied by any appropriate application in the nature of Order XVIII Rule 17 of the Code of Civil Procedure.

As such, those documents were not considered and the application for compensation was dismissed. Subsequently, the petitioners filed a review

application on the ground that, despite having filed those documents, those were not considered by the Court.

The review application was dismissed, inter alia, on the ground that the petitioners could not satisfy the court that the voters' list and EPIC card could not be considered at the time of passing of the order. The second ground on which the review application was rejected was that apparently an aspersion was cast on the predecessor-in-office of the trial judge, to the effect that the document was filed by way of firsti but had not been considered at the time of passing of final order. The third ground was that this review application could not be entertained, having been filed by unscrupulous litigants.

The last reason for rejection of the review application was that there is a gulf of difference between appellate jurisdiction and review jurisdiction.

None of the grounds taken in the impugned order can stand a moment's scrutiny. As far as such relevant documents are concerned, the hyper technical approach adopted by the court below was contrary to the well-settled principle of law, that the provision of compensation to the relatives of victims in accident cases are intended to be liberally construed for the benefit of the weaker sections of the society, who suffer immensely due to the death of the earning member of the family. As such, adoption of

such hyper technical approach, particularly since the petitioner no.1 does not seem to be well educated and the two children of the petitioner no.1, being the petitioner no.2 and 3, being apparently contractual labours, who cannot have any nexus with the nitty-gritties of law discussed in air-conditioned court-rooms. As such, the approach of the appellate court in shutting out the claimants on technical grounds is deprecated. As far as the second ground is concerned, no aspersion was raised at all against the predecessor-in-office of the trial judge by merely taking the ground in review that despite some documents having been filed, those were not considered, which was actually correct.

The third ground of refusal, that the litigants were unscrupulous, was not only unwarranted but not borne out by the facts of the case. The court below ought to have taken into consideration the financial and social plight of the petitioners on the death of the earning member of the family.

This court is actually not interested in the fourth ground, at all since it was intended merely to canvass the academic acumen of the trial judge, without looking into the merits of the case and exploring how relief could be granted to the hapless litigants.

In the present case, despite the petitioners having filed the relevant documents pertaining to the

age proof of the deceased at a belated stage, the court below ought to have granted an opportunity to the litigant to file an appropriate application, explaining the delay and to have permitted introduction of such otherwise relevant document on the records.

As such, C.O. 36 of 2019 is allowed, thereby setting aside the impugned order and directing the court below to re-hear and dispose of the review application filed by the petitioners afresh on its merits, upon granting an opportunity to the petitioners to produce the documents in support of the age proof of the deceased, in accordance with law.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties upon compliance of usual formalities.

(Sabyasachi Bhattacharyya, J.)