

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 6505 OF 2016**

[Smt. Shakila Begum Sayyed Gaffar and another vs. Suraj Singh s/o Tejasingh and ors.]

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Gayatri Diwe, h/f. Shri. P. R. Agrawal, counsel for petitioners.
Shri. B. P. Bhatt, counsel for respondent No.3.

CORAM : MANISH PITALE J

DATED : 02/12/2019

By this writ petition, the petitioner has challenged order dated 24/11/2014 passed by the Motor Accident Claims Tribunal, Yavatmal, whereby an application filed by the petitioner for release of amount of compensation determined by the Tribunal in the context of the death of one Saiyyed Amir Saiyyed Gaffar was rejected.

2. The background facts leading to the Tribunal passing the impugned order are that the said person had moved a claim petition before the Tribunal in the context of injuries suffered in a motor vehicle accident.

3. It is an admitted position that when the Tribunal passed its judgment and order dated 12/09/2012 holding that the said person was entitled to compensation amount of Rs.1,23,000/- along with simple interest @9.00%p.a., the said claimant had already died on 16/05/2012. It was because the said fact could not be brought to the notice of the Tribunal that the said judgment and order dated 12/09/2012 was passed in favour of the dead claimant.

4. Subsequently, the respondent No.3 insurance company deposited an amount of Rs.1,50,057/- before the Tribunal in terms of the order passed by the Tribunal on the claim petition. Thereafter, an application was moved on behalf of the petitioners claiming to be mother and brother of the deceased, seeking release of amount deposited by the respondent No.3 insurance company before the Tribunal. The said application has been rejected on the basis of that judgment and order dated 12/09/2012, was passed after the death of the original claimant during the pendency of the claim petition and since it was an order passed in favour of a dead person, it was a nullity under the provisions of the Civil Procedure Code. Accordingly, the Tribunal was of the view that no direction could be granted for release of the amount in favour of the applicants (petitioners in this writ petition). It is relevant that petitioner No.2 had stated before the Tribunal that he was giving no objection to the petitioner No.1 to withdraw the entire amount.

5. There can be no doubt about the fact that when the Tribunal passed above judgment and order in favour of a dead person, it would be a nullity and in that backdrop, the application for release of amount could not be granted by the Tribunal. At the same time, an opportunity ought to be granted, in the interest of justice to the petitioners herein to set right the wrong that had occurred before the Tribunal, as the petitioners claiming to be the legal representatives could not get an opportunity to bring themselves on record before the Tribunal. If an appropriate application was moved at the

proper time before the Tribunal, the petitioners would have got an opportunity to place their claim to bring the legal representatives of the original claimant on record.

6. Therefore, this Court is of the opinion that in the interest of justice an opportunity needs to be granted. In this context the learned counsel appearing for the petitioner has placed reliance on judgment of the **Karnataka High Court** in the case of **B.K.Pushpalatha and others vs. Gopala and others 2009 ACJ 2415**, wherein the High Court was considering a similar situation. The only distinguishing factor in that case was that the claim petition itself had been dismissed as abated by the Tribunal. The High Court disposed of the writ petition by permitting the petitioners therein to move appropriate application before the Tribunal for setting aside appointment, condonation of delay and bringing legal representatives of the claimant on record for further consideration and processing of the matter.

7. In the present case also it would serve the ends of justice if such an opportunity is granted to the petitioners.

8. Accordingly, the present writ petition is disposed of in the following terms :-

(1) The petitioners are permitted to move proper applications before the Tribunal including application for bringing themselves on record as legal representatives of the original claimants, application for

condonation of delay and the application for setting aside the abatement of the claim petition.

(2) The order passed by the Tribunal determining the quantum of compensation has not been challenged by the insurance company herein and therefore, determination of compensation has been already done on the basis of record, which may not be disturbed.

(3) The respondent No.3 insurance company shall be given an opportunity to respond to the applications that may be filed by the petitioners/plaintiffs.

(4) The Tribunal shall consider the said applications on their own merits and thereafter consider the question of release of the amount already deposited by the insurance company in the Tribunal, in favour of the petitioners. The petitioners would be at liberty also to move an application to withdraw the said amount after appropriate orders are passed in the aforementioned proposed applications before the Tribunal.

(5) Writ Petition disposed of in above terms.

JUDGE