

FAO No. 3854 of 2012 (O&M)

Date of decision : September 30, 2019

Saraswati Ambedkar and others

.....Appellants

Versus

Pritam Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Vivek Sharma Vashisht, Advocate
for the appellants.Ms. Shivya Sehgal, Advocate
for respondents No. 1 and 2.

LISA GILL, J.

Present appeal has been filed by the claimants challenging award dated 02.11.2011 passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal'). Claim petition under Section 166 of the Motor Vehicles Act filed by the appellants-claimants has been dismissed by the learned Tribunal vide award dated 02.11.2011. The claimants had filed the said petition seeking compensation on account of death of Shiv Rattan Ambedkar i.e. husband of appellant No. 1, father of appellants No. 2 to 6 and son of appellant No. 7, on 19.05.2006, in a motor vehicle accident, caused due to rash and negligent driving of the offending vehicle, i.e. Tata 407 bearing registration No. PB-10-BM-5083, by respondent No.1.

It is a matter of record that the evidence of the claimants was closed by order on 16.04.2008 as they had failed to conclude their evidence. AW1 Majibu Rehman, the alleged eye witness of the accident tendered his affidavit Ex. A1 but he did not appear for his cross examination. The claim petition was dismissed in default on 14.05.2008. An application for restoration of the claim petition was moved on 25.09.2008 attached as

Annexure P1 with this appeal. The said application was allowed by the learned Tribunal on 02.11.2011 after framing of issues and leading of evidence by the parties. Copy of the said order is attached as Annexure P3 with this appeal. It is specifically observed therein that the applicants are illiterate persons and could not understand the intricacies of law and the claim petition was consequently ordered to be restored to its original number of institution.

However, learned Tribunal on that very day i.e. 02.11.2011, proceeded to dismiss the main claim petition on the ground that evidence to support their case was not led by the claimants. Therefore, the claim petition was dismissed for want of any evidence.

Learned counsel for the appellants vehemently argues that an application for recalling order dated 16.04.2008 had to be moved by the claimants but the same could be done only after the restoration of the appeal. However, the claim petition was erroneously dismissed on 02.11.2011 itself. Once the learned Tribunal had restored the appeal, reasonable opportunity should have been provided to the appellants who are accepted to be illiterate, rustic people. It is, thus, prayed that impugned award dated 02.11.2011 be set aside and the matter be remanded to the learned Tribunal for a decision afresh.

Learned counsel for respondents No. 1 and 2 has controverted the arguments while submitting that there is no question of remand of this matter. The impugned award has been correctly passed. The same be upheld.

Heard, learned counsel for the parties.

It is not in dispute that the claim petition preferred by the applicants-claimants was dismissed in default on 14.05.2008. However, the

said order was recalled by the learned Tribunal after framing of specific issues and leading of evidence by the parties vide order dated 02.11.2011. Learned Tribunal proceeded to dismiss the claim petition itself on 02.11.2011. The claimants - appellants have been accepted to be illiterate rustic people as is reflected in order dated 02.11.2011 restoring the claim petition.

Keeping in view the facts and circumstances of the case as well as the fact that the present is admittedly a claim under a beneficial legislation, impugned award dated 02.11.2011 is set aside. The matter is remanded to the learned Tribunal to be decided afresh. The parties are directed to appear before the learned Tribunal on 30.10.2019.

It is, however, made clear that none of the observations in this order are a reflection on the merits of the case, which needless to say shall be decided in accordance with law.

Present appeal is, accordingly, disposed of.

September 30, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No