

\$~38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Decided on: 18.12.2019

+ CM(M) 1802/2019, CM APPL. 54310/2019 & CM APPL.
54311/2019

NAZRUDDIN

..... Petitioner

Through: Mr. Sunil Kumar, Mr. Rajbir Bansal
and Mr. Anand Chaudhary,
Advocates.

versus

NATIONAL INSURANCE CO LTD

..... Respondent

Through: Mr. Pankaj Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 54309/2019 (delay of 27 days in filing)

1. This application seeks condonation of delay of 27 days in filing of the petition.
2. For the reasons mentioned in the application, the delay is condoned.
3. The application stands disposed-off.

CM(M) 1802/2019, CM APPL. 54310/2019 & CM APPL. 54311/2019

4. Issue notice.
5. The learned counsel named above accepts notice on behalf of the insurance company.
6. At joint request, the petition is taken up for disposal.

7. This petition impugns the order dated 09.08.2019 passed by the learned MACT in MACT Case No. 1624/11 (Old Case No. 24/11/2009), declining the petitioner the opportunity to amend his reply to the claim petition. The petitioner claims to be a partially illiterate person and not conversant with the intricate ways of litigation in courts of law. He states that he had instructed his counsel that before employing the driver of the offending insured vehicle, he had seen the driving licence produced by the driver, which appeared to him to be valid and thereafter, he had taken the driving test of the driver and found him to be skilful enough to drive the vehicle. Since this particular plea had not been drafted by the counsel, and therefore, the petitioner is seeking amendment of the petition.

8. According to the learned counsel for the petitioner, this plea is fundamental to his defence against the claim petition apropos his liability. It is contended that if the argument is denied to be even pleaded, his rights would be irreparably prejudiced.

9. The petitioner had filed his amendment application under Order 6 Rule 17 CPC on 17.09.2018. It was disposed-off by way of impugned order on 02.12.2019. After the filing of the said application, the case was adjourned twice, once because the learned Presiding Officer was on leave and on second time the applicant's counsel was not present. On the third date, the impugned order was passed. In effect from the date of filing of the claim petition till its disposal, nothing worthwhile happened in the case.

10. The Court is of the view that every party must be accorded due opportunity to present its case before an adjudicatory forum, especially in circumstances where the party is disadvantaged because of lack of literacy

and/or a counsel not rendering due advice. The case is still at trial stage and providing the petitioner to plead his case fully would be fair.

11. This Court on 10.09.2018 had passed an order which reads as under:

“Impugned order of 15th December, 2017 (Annexure P-1) notes petitioner's submission that he wants to amend the written statement to incorporate the fact that the driver of the vehicle in question came to meet him and showed his license and thereafter only, he had employed the driver.

Counsel for petitioner submits that permission was sought from the learned Motor Accident Claims Tribunal (henceforth referred to as the 'Tribunal') to file an application for amendment of the written statement already filed by petitioner and without giving an opportunity to file the application, the permission to file the amended reply has been declined by relying upon proviso under Order 6, Rule 17 of CPC.

In the facts and circumstances of this case, I find that the Tribunal was not justified in declining the oral prayer made by petitioner to file the amended reply/ written statement and an opportunity ought to have been granted to him to file proper application.

Accordingly, impugned order of 15th December, 2017 (Annexure P-1) is modified to the extent that petitioner is permitted to file an application within a week for amendment of the reply/ written statement. The Tribunal shall upon receipt of such an application, deal with it in accordance with the law, while keeping in view that any observation in the impugned order in respect of amendment of the written statement/ reply by petitioner, will not be taken into consideration while deciding the said application.

With aforesaid directions, this petition and application are disposed of.

Dasti.”

12. Due application in this regard was moved thereafter, which has now been dismissed. In view of the above, the reason for the dismissal is erroneous and cannot be sustained. Accordingly it is set aside. The application is allowed. The case is remanded to the learned Tribunal where the parties shall appear on 24.12.2019 for further proceedings.

13. Be that as it may, because of the delay caused in the claim proceedings which was initiated many years ago, the petitioner shall pay Rs. 10,000/- to the insurance company as costs and Rs. 5,000/- shall be deposited into the 'AASRA' Fund created by this Court.

14. The petition is disposed-off in terms of the above.

15. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

DECEMBER 18, 2019

AB

NAJMI WAZIRI, J

नात्यमेव जयते