

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.1412 OF 2020

Sister Prema Mathew ...Petitioner
vs.
Society of Servants of Holy Spirit Hospital
and Another ...Respondents

**WITH
WRIT PETITION (ST.) NO.2295 OF 2020**

Rosy Pascal ...Petitioner
vs.
Society of Servants of Holy Spirit Hospital
and Another ...Respondents

Mr. Yahyah Ghoghari i/b. Ms. Ruchika Dave, for the Petitioners
Ms. S.S. Dwivedi, for Respondent No. 2.

CORAM : N. J. JAMADAR
DATE : MARCH 11, 2020

ORAL ORDER:

. The challenge in these Petitions is to the order passed by learned Chairperson of the Motor Accident Claims Tribunal, Mumbai on applications for production of the documents in MACT Application No. 313 of 2012 and MACT Application No. 314 of 2012.

2. The Petitioners had preferred the aforesaid applications for seeking permission to produce certain documents in support of their claims, being the original bills, original receipts of inpatient, OPD, discharge card, employment certificate, leave certificate, copy

of disability certificate issued by Dr. Puranik and Dr. Dilema. The application was preferred by the Petitioners at the stage of final argument after the evidence of the parties was closed.

3. The learned Chairperson was persuaded to reject the application for production of the aforesaid documents principally for the reason there was no justifiable reason as to why the Petitioners did not produce those documents when the Petitioners had filed affidavit in lieu of examination in chief. Since the Petitioners' cross examination was over, the parties closed the evidence and the matter was posted for final argument by the learned counsel of the insurer, the Tribunal found no justifiable reason to allow the application, which was considered to be a part of the tactic to protract the litigation.

4. The learned counsel for the Petitioners submitted that the Tribunal has taken a very hyper-technical view of the matter. The documents were, in fact, referred to in the affidavit in lieu of examination in chief. However, on account of inadvertence those documents could not be placed on record. The Petitioner would suffer serious prejudice if the Petitioner is not permitted to place the said documents on the record of the Tribunal as they bear upon

the entitlement of the Petitioners to compensation.

5. The learned counsel for the Respondents, on the other hand, submitted that during the course of examination, it was elicited that all the medical bills of the Petitioners were paid by the hospital. Now, according to the learned counsel for the Respondents, an endeavour is being made to place on the record of the Tribunal the medical bill of huge sum of Rs. 9 lacs, which appear to have been issued in the year 2019. Thus, the learned Chairperson was justified in rejecting the application for production of the documents.

6. To begin with, the nature of the inquiry by the Tribunal can not be lost sight of. The strict rules of procedure are not applicable to the Tribunal while determining the compensation for the death or injury suffered in a vehicular accident. A reference in this context can be made to the judgment of the Hon'ble Supreme Court in the case of **United India Insurance Company Limited and Shila Datta and Others**¹. The Supreme Court elucidated the nature of the claim Petition, as under:

A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section

¹ (2011) 10 Supreme Court Cases 509.

165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by the Tribunals:

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim. Petitioner as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (vide section 168 of the Act).

(vii) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (vide section 169 of the Act).

We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.

7. In the case at hand, the learned Chairman seems to have

rejected the application for the reason that the Petitioner did not assign any reason as to why those documents were not filed while filing the affidavit of evidence. Undoubtedly, there was an element of lapse on the part of the Petitioners. However, the claim of the Petitioners that those documents were referred to in the affidavit of evidence, finds support in the affidavit sworn by the Petitioners. In the concluding paragraph of the affidavit the Petitioners have relied upon these documents. The aforesaid assertions constitute a formidable dyke against the Petitioners relying upon planted documents to bolster up their claim after the evidence is led. This factor singularly rules out any element of mala fide on the part of Petitioners.

8. In any event, the veracity of the documents is a matter to be considered. In the event the production of the documents is allowed the Respondents would get an opportunity to contest the same if the Petitioners propose to prove those documents in evidence. Thus, no prejudice would be caused to the Respondents.

9. The conspectus of the aforesaid consideration is that the Petitions deserve to be allowed. Hence, the following order:

a] The Petitions stand allowed.

b] The impugned orders passed by the Motor Accident Claim Tribunal stand quashed and set aside.

c] The applications preferred by the Petitioners for production of documents stand allowed.

d] It is made clear that in the event the documents are admitted in evidence, the Respondents/Insurer shall be provided an opportunity to further cross examine the Petitioners and lead evidence, if desired to.

10. The Petitions accordingly stand disposed of.

(N. J. JAMADAR, J.)