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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.881 OF 2019

OSWALD CALDEIRA, REP.

BY CLARA EUGENIA CALDEIRA

... Petitioner.

Versus

DEVANDRA NAIK AND 2 ORS.

... Respondents.

Mr. Jatin Ramaiya, Advocate *for the Petitioner.*

Mr. A.R.S. Netravalkar, Advocate *for Respondent No.2.*

Coram: MANISH PITALE, J.

Date: 23rd December 2021.

P.C.:

1. By this writ petition, the Petitioner i.e. Original Claimant has approached this Court challenging the order dated 17.08.2019 passed by the Motor Accident Claims Tribunal, Panaji whereby an application filed on behalf of the Petitioner (Exhibit D/118) has been dismissed.

2. The brief facts leading to filing up of the present writ petition are that the Petitioner i.e. Claimant had approached the Tribunal for grant of compensation. In the first instance, the application was allowed and award was passed in favour of the Petitioner. The same was made the subject matter of challenge before this Court in First Appeal

No.111/2016. By Judgment and Order dated 13.07.2018, this Court partly allowed the appeal and remanded the matter to the Tribunal.

3. This Court took into consideration the serious dispute raised on behalf of the Respondents as regards certain documents placed on record i.e. the panchanama and sketch on behalf of the Petitioner before the Tribunal.

4. This Court took into consideration the serious dispute raised with regard to the said documents and the claim of the Respondents that genuine documents were sought to be produced to demonstrate that the claim application of the Petitioner ought not to have been granted.

5. The relevant observations of this Court while remanding the matter in the order dated 13.07.2018 passed in First Appeal No.111/2016 read as follows:-

“2. Shri A.R.S. Netravalkar, learned Advocate for the appellants pointed out to the Scene of accident Panchanama and the sketch apart from the Report of the Sub-Divisional Police Officer procured by him under the Right to Information Act, to point out the apparent manipulation in the Panchanama and the sketch relied upon by the respondent claimant before the learned Tribunal. It appears that the learned Tribunal was swayed by the Panchanama and the sketch produced by the respondent while appreciating the case of the parties and passed the judgment under challenge. Since a serious dispute is raised in the course of the hearing about the Panchanama and the sketch by Shri A.R.S. Netravalkar, learned Advocate for the appellants and there being some palpable manipulation observed in the Panchanama and the

sketch produced on behalf of the respondent, i deem it appropriate in the circumstances of the case to remand the matter to the learned Tribunal who shall afford opportunity to the parties herein to lead appropriate evidence and prove the said documents before it.

3. Liberty is granted to the appellants to produce the Panchanama and the sketch apart from the 'A' summary report drawn by the Sub-Divisional Police Officer, Ponda dated 18/07/2003 and the Panchanama and the sketch dated 23/04/2003. The learned MACT to afford adequate opportunity to the parties to lead evidence including the right of cross-examination and decide the matter afresh. It goes without saying that the impugned judgment and award is required to be quashed and is thus quashed and set aside and the matter remanded to the learned MACT for a trial, afresh."

6. When the claim application was again taken up for consideration by the Tribunal in pursuance of the aforesaid order passed by this Court, the Petitioner moved the aforesaid application at Exhibit D/118. By this application, the Petitioner contended that while the Respondents may lead evidence in terms of the liberty granted by this Court, but thereafter the Petitioner deserves to be permitted to lead evidence in rebuttal.

7. The said application has been dismissed by the impugned order. The Tribunal has made the following observations while dismissing the application filed by the Petitioner:-

"By this Order, the Hon'ble High Court has only directed this Court to give an opportunity to the parties i.e. to the appellants to lead evidence in respect of the documents of which they were deprived of. The appellants therein are the

respondents herein but the said Judgment and Order does not state anywhere that the present respondents have to lead the evidence and the applicants shall lead evidence in rebuttal thereafter. The present application has been filed which appears to be an interpretation of the claimant themselves and therefore the contention of the claimant that the respondent should lead evidence first and the applicant should lead evidence thereafter is totally not justified, not reasonable nor maintainable. The Hon'ble High Court has only directed this Court to give adequate opportunity to the parties to lead evidence including the right of cross examination and decide the matter afresh. Therefore, the question of the respondents leading evidence first does not arise.”

8. This Court is of the opinion that an appropriate interpretation of the liberty granted by this Court in paragraph 3 of the Order dated 13.07.2018, while partly allowing the First Appeal No.111/2016, ought to be that the Respondents may lead evidence in support of documents that they have been permitted to produce before the Tribunal and thereafter, the Petitioner ought to be granted an opportunity to lead evidence in rebuttal, apart from cross-examining the witnesses that may be examined by the Respondents before the Tribunal.

9. This Court is unable to agree with the observations made by the Tribunal, quoted above, wherein it has been held that this Court only directed opportunity to be granted to the Respondents to lead evidence and a right of cross-examination to the Petitioner. The exercise being carried out by the Tribunal is to arrive at the truth of the matter and to analyse as to whether the Claimant i.e. the Petitioner is entitled to grant

of compensation in the backdrop of the incident leading upto filing of the claim application. The Petitioner deserves to be granted sufficient opportunity to assist the Tribunal in arriving at the truth of the matter and therefore, it becomes evident that the approach adopted by the Tribunal was not appropriate and certainly not in terms of the directions given by this Court while remanding the matter to the Tribunal.

10. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. Consequently, the application filed by the Petitioner (Exhibit D/118) is allowed in terms of the prayers made therein. The Tribunal is directed to expedite the proceedings.

MANISH PITALE, J.