Bhogale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8463 OF 2019
WITH
INTERIM APPLICATION ST. NO.5523 OF 2021
IN
WRIT PETITION NO.8463 OF 2019

The National Insurance Company Limited
Through Branch Manager .. Petitioner
vs.
Ashok Bhimsha Bansode & ors. .. Respondents

Mrs. Poonam Mital for the Petitioner.

Mr. Ravindra S. Pachundkar for the Respondent Nos.1 to 4.

CORAM : M.S.KARNIK, J.

DATE : MARCH 11, 2021

P.C.

Heard leaned counsel for the parties.

2. The order under challenge is passed by the Member, Motor Accident Claims Tribunal, Solapur dated 11.10.2018 rejecting the Application Exhibit 16 made by the Petitioner Insurance Company for setting aside ex-parte order and to accept written statement. It is the contention of learned counsel for the Insurance Company that the written statement was filed after a delay of 1 year and 2 months. From the Application it appears that the Petitioner accepted service of summons, but according to them the summons got misplaced in the office. Learned counsel for the Insurance Company noticed the Claim Petition was on board when he had

gone to attend some other matter. The matter was listed for ex-parte hearing. This fact was informed to the Insurance Company. Thereafter, the written statement was filed on record on 23.03.2018 on which date the Petitioner-Insurance Company appeared.

3. Learned counsel for the Respondent Nos.1 to 4-Original Claimants opposed the Petition. He submitted that no exceptional circumstances have been shown for the delay in filing the written statement. It was the stand of the Original Claimants before the Tribunal that in the alternative subject to payment of cost of Rs.50,000/- the Application can be granted and written statement permitted to be taken on record.

4. The Tribunal has in detail considered the law on the subject and for the reasons mentioned dismissed the Application. No doubt the Application for setting aside the ex-parte order and taking the written statement on record is belated by 1 year and 2 months. The reason putforth by the Insurance Company is that the summons served got misplaced. The Insurance Company after being informed by their Advocate that the matter is listed for ex-parte hearing appeared before the Tribunal and made an application for setting aside the ex-parte order and taking written statement on record. Alongwith the application even the written statement was submitted.

5. Though the application was opposed by the learned counsel for the Original Claimants before the Tribunal, in the alternative it is stated that the written statement could be accepted by setting aside the ex-parte order subject to payment of cost of Rs.50,000/-.

6. Though there is a delay in filing the written statement, considering the reasons and even that the Claimants are willing to accept costs, I am of the opinion that the Insurance Company should not be deprived of an opportunity to contest the Claim Petition by filing written statement, when the Claimants are willing to accept costs. This Court on the earlier occasion directed the Petitioner-Insurance Company to deposit cost of Rs.50,000/- before the Tribunal. There is no dispute that the said amount has been deposited. In fact the Application has been made in this Court by the Claimants for withdrawal of the said amount of Rs.50,000/-. In this view of the matter, in my opinion, in the interest of justice, the Petitioner-Insurance Company should not be deprived of an opportunity to contest the claim on merits. The impugned order therefore is set aside. The Petition is allowed in terms of prayer clause (b) subject to payment of cost of Rs.50,000/- which was already been deposited by the Petitioner.

7. The Writ Petition is disposed of.

8. As the Writ Petition has been allowed, learned counsel for the Petitioner has no objection if the Original Claimants withdraws the

cost of Rs.50,000/- deposited. Accordingly, the Interim Application is allowed and the Original Claimants present Respondent Nos.1 to 4 are allowed to withdraw the cost of Rs.50,000/- deposited before the Tribunal. Considering that the Original Claimants lost their younger son who was the only breadwinner in the family, the Tribunal is requested to expedite the claim Petition preferably within nine months from today. The Petitioner as well as the Original Claimants to cooperate with the Tribunal and will not seek unnecessary adjournments.

9. The Interim Application is disposed of.

(M.S.KARNIK, J.)

Diksha Rane Digitally signed by Diksha Rane Date: 2021.03.11 14:31:22 +0530