IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12449 OF 2022

Swapnil Sudhakar Jadhav
and others .... Petitioners

Versus

Kamlesh Upendra Javeri
and others .... Respondents

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Mr. Amol Gandhi, Advocate h/f Mr. Punit S. Mehta, Advocate for Petitioners
Mr. A.S. Usmanpurkar, Advocate for Respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 25th September , 2023

ORDER :

1. Petitioners are aggrieved by the order passed by Motor Accident Claim Tribunal, Aurangabad below Exhibit-56 in Motor Accident Claim Petition No.47 of 2017, thereby rejecting the request of petitioners/claimants for recalling of witness.

2. Claim petition is filed by petitioners/claimants seeking compensation for the death of wife of petitioner No.1 and mother of petitioner Nos.2 and 3. During the course of recording of evidence, officer from Income Tax Department was summoned at the instance of petitioners/claimants. His evidence was recorded. Twice he was present before the Tribunal for recording of evidence. Thereafter, by filing

Application Exhibit-56, petitioner/claimants requesting the Tribunal to recall the Income Tax Officer, contending that in the deposition, the Income Tax Officer has stated that deceased Sayee Chandrakant Gavhane has not filed income tax returns of Assessment year 2014-15, and has further stated that income tax returns of Assessment year 2015-16 is invalid. It is further contended that deceased has paid advance tax for Assessment year 2014-15 and 2015-16, but claimants have failed to bring on record said advance tax receipts. In these circumstances a prayer was made to recall Income Tax Officer along with documents i.e. income tax returns of Assessment year 2012-13, Form No.26 along with income slabs of the year 215-15 and 2015-16 along with authority letter of P.F. paid. This application was opposed by respondent No.3/Insurance Company by a detail say filed at Exhibit-57. Tribunal has rejected the application holding that, when the Income Tax Officer was examined and produced documents, at that time, claimants had not sought production of advance tax assessment for the year 2014-15 and 2015-16. Even, during the cross-examination of Income Tax Officer, claimants never raised grievance of non-production of advance tax receipts. Hence, the present petition.

3. Heard learned advocate for petitioners and learned advocate for respondent No.3. Perused the writ petition memo, annexures thereto, and impugned order.

4. Learned advocate for respondent No.3/insurance company has vehemently opposed the prayer of petitioners contending that though the Income Tax Officer was examined, and he was present twice for recording his evidence, at that point of time, petitioners/claimants have failed to make this prayer. By this application, petitioners/claimants are trying to fill up lacuna in the evidence.

5. It is evident from the record that petitioners/claimants have received copies of advance tax receipts, subsequent to recording of evidence of Income Tax Officer. Be that as it may, petitioners/claimants are entitled to lead best possible evidence in support of their claim. By the impugned order, reasonable and fair opportunity to lead the best possible evidence is denied to the petitioners/claimants, by the Tribunal. It is settled legal position that Tribunal is not bound by procedural rules and strict rules of evidence. Since the impugned order denies opportunity to lead evidence to petitioners/claimants, is unsustainable and the same is liable to be quashed and set aside.

6. In the result, the writ petition is allowed.

7. Impugned order dated 26/09/2022 passed by Ad hoc District Judge-2, Aurangabad, below Exhibit-56 in Motor Accident Claim Petition No.47 of 2017 is hereby quashed and set aside.

8. Application Exhibit-56 is allowed.

9. Considering the fact that claim petition is of the year 2017, hearing of Motor Accident Claim Petition No.47 of 2017 is expedited.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane