



\$~6

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

% Date of decision: 22nd January, 2024

+ CM(M) 1648/2023 & CM APPL. 52281/2023

MOONMOON DHAR & ORS. Petitioners

Through: Mr. Pratap Singh, Advocate.

versus

KARUNA TANDON & ANR. Respondents

Through: Mr. L.N. Rao & Mr. Aryan
Rajpal, Advocates for R-1.

Mr. Ankit Kalra, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioners, who are claimants seeking compensation, assail the impugned order dated 12.07.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal (South-East), Saket Court, New Delhi¹ in the present writ jurisdiction under Article 227 of the Constitution of India.

2. Evidently, the matter is at the stage of leading evidence by the parties and the evidence of PW-1 i.e., the claimant-wife as also eye witness, namely Ms. Sitali Mandal and another witness as PW-3 has since been concluded. It appears that PW-4, namely Anurag Kumar, Director of United Biscuits Private Limited, was summoned as a witness, who produced as many as 17 documents on the record with regard to previous employment and details as to income salary being

¹ Tribunal



earned by the deceased, which documents are Ex.PW-4/A to PW-4/Q. The said witness has also been cross-examined lastly on 13.04.2023. It was at this stage that an application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908² had been moved on behalf of the Insurance Company seeking to recall PW-1 and PW-2 for their further cross-examination.

3. The said application came to be decided by the learned Tribunal vide impugned order dated 12.07.2023, which reads as under:-

“1. Reply already filed by claimant side and arguments already heard in detail on the application dated 02.06.2023 filed by insurance company/respondent/applicant to recall the witness PW-1 & PW-2 for their further cross examination. Thereafter, case is fixed for order today.

2. Both the sides relied upon case laws including on order 18 Rule 17 CPC. This Tribunal have heard both the side and gone through the record.

3. It is settled law as also mentioned by parties that ordinarily power u/o 18 Rule 17 CPC cannot be use. In any case, it cannot be use to fill the lacuna in the case of a party. In the present case also cross examination of PW-1 & PW-2 already conducted by the insurance side.

4. But having noted so, it may further be noted that after examination of PW-1 & PW-2, another witness PW-4 and it is the stand of insurance company that thereafter only for the first time, they came to know about certain new facts which are material including relating to income of the deceased. Further, it may be noted that case laws relied by the parties are rerating to civil suit which relates to trial of a suit. Whereas, proceedings in the present case are in the nature of inquiry. Thus, such strict rule of suit including order 18 Rule 17 CPC and its interpretation by Hon'ble higher courts is not strictly applicable to the present proceedings. The whole purpose of present inquiry/proceedings is to arrive at a just compensation. Further, no material prejudice is likely to be caused by claimant side as matter is pending at PE stage. As such, subject to cost of Rs. 2,000/- to be paid by insurance company to the claimant side, prayer made in the present application dated 07.07.2023 is allowed and consequently, it is ordered that PW-1 &

² CPC



PW-2 are recalled for the purpose of further cross examination of PW-1 and PW-2 by insurance company before LC in terms of previous order. But under these circumstances, it is further ordered that insurance company will pay a further cost of Rs. 1,000/- each to the Ld. LC for each of such witness further cross examination.

5. With these observations, findings and directions, present application of insurance company stand disposed off.

6. A copy of this order be sent to Ld, LC for his information and compliance.

7. Put up for final arguments on 09.02.2024”

4. There is no gainsaying that provisions of Order XVIII Rule 17 of the CPC, for re-calling of any witness already examined by the Court, is a discretionary power, which can only be exercised by the Court in order to arrive at a just and fair decision on the matters in issue. However, this power has to be used sparingly and it cannot be allowed be exercised where a party moving the application wishes to fill up the lacuna in the previous examination or cross-examination, or seeks to introduce altogether new facts.

5. On a careful perusal of the impugned order merely because PW-4 has brought some new evidence on the record with regard to employment and salary income of the deceased, it does not strike to reason as to why PW-2 has been ordered to be re-called, who is an alleged eye witness of the motor accident in question. She has nothing to do with the previous employment of the deceased and/or salary income that was being earned by the deceased. It has been sought to be urged by the learned counsel for the Insurance Company that further inquiries have revealed that PW-2 was employed as a maid servant with PW-1. I am afraid that merely on that ground alone, PW-2 cannot be allowed to be re-called. The Insurance Company has a





huge field staff at its disposal and such facts could have been easily ascertained by exercising due diligence.

6. However, insofar as PW-1 is concerned, there are shown some justifiable grounds to re-call her for her cross-examination qua the issue of salary income or earnings of the deceased.

7. In view of the foregoing discussion, the present Civil Misc. (Main) is partly allowed thereby setting aside the directions of the learned Tribunal to re-call PW-2 Ms. Shitali Mandal. However, the impugned order insofar as it directs recalling of PW-1 i.e., the claimant No.1, who is wife of the deceased is hereby sustained.

8. Accordingly, the remaining testimony of PW-1 qua earnings of the deceased may be recorded before the learned Local Commissioner appointed by the learned Tribunal, for which purpose, fresh dates may be given by the learned Tribunal.

9. The pending application stands disposed of.

10. A copy of this order be sent to the learned Tribunal for information and necessary compliance.

DHARMESH SHARMA, J.

JANUARY 22, 2024

Sadique