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

+ **MAC.APP. 399/2016 & CM APPL. 7310/2024**

RAJESH BHATIA

.....Appellant

Through: Mr. Dinesh Rohilla, Mr. Deepak Chopra, Mr. Arvinder Singh Oberoi and Mr. Mohan Singh, Advocates

versus

MD JAVED QURESHI & ORS (RELIANCE GENERAL INSURANCE CO LTD)

.....Respondents

Through: Mr. Raj Kumar and Mr. V. P. Tiwari, Advocates for R-1 And R-2 (Through VC)
Mr. A. K. Soni, Advocate for R-3 (Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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19.09.2024

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 ("MV Act" hereinafter) has been filed on behalf of the appellant against the order dated 16th February, 2016 ("impugned order" hereinafter) passed by the learned Presiding Officer, Motor Accident Claims Tribunal, East, Karkardooma Courts, Delhi in Suit No. 162/2013, wherein the proceedings were closed on the ground that the appellant has already sought many adjournments and appears uninterested in pursuing the instant matter.
2. Learned counsel appearing on behalf of the appellant submitted that



due to the alleged accident dated 30th September, 2011 caused by the respondent no.1, i.e., the driver of the offending vehicle, owned by respondent no.2, the appellant suffered grievous injuries that led to severe fractures, pursuant to which, he remained bed ridden for several months. It is submitted that as a consequence of the aforesaid incident, an FIR bearing No. 288/2011 dated 1st October, 2011 was lodged at Police Station, Geeta Colony, Delhi.

3. Learned counsel appearing on behalf of the appellant submitted that on 3rd August, 2013, a claim petition was filed under Sections 140 and 166 of the MV Act by the appellant before the learned Tribunal seeking compensation amount for the grievous injuries sustained by the appellant.

4. It is submitted that *vide* order dated 2nd May, 2012, the learned Tribunal dismissed the DAR proceedings with respect to the alleged accident due to non-appearance of the appellant, however, it is submitted that the appellant was never served in the aforesaid proceedings and the bar was on strike on the aforementioned date.

5. It is submitted that the learned Tribunal erred in closing the proceedings by way of the impugned order and holding that the appellant was not interested in adjudication of the same as the appellant never tried to delay the proceedings, rather the instant matter was not adjudicated in view of the fact that bar was on strike on certain dates, i.e., 2nd May, 2012, 31st July, 2015 and 13th October, 2015, and therefore, the claim petition was adjourned by the learned Tribunal on the said dates.

6. Learned counsel appearing on behalf of the appellant further submitted that the appellant/claimant, i.e., PW-1, got his affidavit of evidence attested on 28th November, 2015 and the same was listed to be



filed on 30th November, 2015, however, it is submitted that on the aforementioned date, the appellant was informed that the Presiding Officer of the learned Tribunal was on child care leave from 17th November, 2015 to 1st December, 2015, thus, further adjourning the instant matter to 16th February, 2016, and the appellant was instructed to file the said affidavit of evidence on the date fixed.

7. It is submitted that the learned Tribunal failed to appreciate that all the aforesaid adjournments granted by the learned Tribunal, were not on account of the appellant but for the reasons stated hereinabove, due to which the claim petition got delayed and proceedings could not take place, and therefore, the appellant was unable to proceed with his evidence before the learned Tribunal.

8. It is further submitted that the learned Tribunal further failed to consider that on the date of the impugned order, i.e., 16th February, 2016, the appellant was seeking a short adjournment to file his affidavit of evidence on genuine grounds of family emergency, i.e., on account of his father's Barsi (death anniversary), therefore, the learned Tribunal erred in finding that that appellant appeared to be uninterested in pursuing the instant matter as the aforesaid reason for adjournment was made with a *bonafide* intention.

9. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal erred in passing the impugned order, holding that various adjournments have been taken by the appellant in order to adduce the evidence, however, the aforesaid finding is contrary to the facts as the proceedings in the instant matter were constantly being delayed for the reason of various bar strikes i.e., 31st July, 2015 and 13th October, 2015, as



already submitted in the foregoing paragraphs.

10. Learned counsel appearing on behalf of the appellant further submitted that despite the passage of 13 years of time from the date of the alleged incident, the appellant has still not received any money or compensation from the respondent-insurance company despite the fact that the appellant suffered grievous injuries.

11. It is submitted that the instant appeal was filed before this Court and after issuance of the notice *vide* order dated 10th May, 2016 to the respondents, the parties prayed that the matter may be sent to the Mediation Centre for exploring the possibility of an amicable settlement, however, the parties failed to reach at a settlement, accordingly, the mediation failed. In view of the aforesaid, *vide* order dated 18th January, 2017, the matter was listed before this Court and the appeal was placed in the category of the “*Regular Matters*”.

12. Therefore, in view of the above facts and circumstances, it is prayed on behalf of the appellant that the impugned order passed by the learned Tribunal may be set aside and that the instant matter may be remanded back before the learned Tribunal for fresh adjudication of the same, thereby granting an opportunity to the appellant for addressing the facts and adducing the evidence, for the purpose of a proper adjudication, in accordance with law.

13. *Per Contra*, Mr. A. K. Soni, learned counsel appearing on behalf of the respondent-insurance company vehemently opposed the submissions advanced on behalf of the learned counsel for the appellant and submitted to the effect that there is no error or illegality in the impugned order as the appellant himself has not chosen to address the matter despite being



provided several opportunities by the learned Tribunal to address the same.

14. Learned counsel appearing on behalf of the respondent-insurance company further submitted that it has no objection with respect to allowing of the instant appeal and remanding the matter back to the learned Tribunal, however, it is prayed that the interest on the compensation amount, if any, for the rest of the period may be exempted.

15. Heard learned counsel appearing on behalf of the parties and perused the record.

16. For proper adjudication of the instant appeal, this Court has perused the submissions advanced on behalf of the parties, the contents of the appeal as well as the order sheets of the several dates on record.

17. This Court deems it apposite to peruse the finding of the learned Tribunal which is under challenge by way of the instant appeal, and the same is produced here as under:

“the matter is pending for evidence since 2nd May, 2015. Many adjournments already sought by the petitioner to adduce the evidence. It seems that the petitioner is not interest in pursuing with the case further.”

18. Upon perusal of the orders passed by the learned Tribunal, placed before this Court, it is observed that the said orders dated 30th November 2015, 13th October, 2015, 31st July, 2015 as well as 2nd May, 2015, *prima facie* show that the claim petition was not adjudicated due to various bar strikes as well as other reasons for leave of the learned Tribunal as recorded in the abovesaid orders.

19. Accordingly, this Court is of the opinion that the learned Tribunal erred in finding that the appellant purposely sought various adjournments



and appeared to be uninterested in pursuing the instant matter as the learned Tribunal had no base for observing the same as. It is observed that a bare reading of the aforesaid orders reflects that the adjournments in the matter were sought on account of various bar strikes which is beyond the control of the appellant.

20. Taking into consideration the facts on record, this Court find force in the arguments advanced by learned counsel appearing on behalf of the appellant.

21. In light of the above facts and circumstances and no objection made on behalf of the respondent-insurance company, this Court is of the view that the claim petition be remanded back to the learned Tribunal for further adjudication after granting an opportunity to the appellant to address his claim by way of evidence and submissions and consequently, the entire claim petition be adjudicated based on the evidence brought on record as well as in accordance with law.

22. Since the respondent-insurance company is not at fault for the delay in adjudication of the said claim petition, the respondent-insurance company is allowed to file appropriate application before the learned Tribunal for exemption of interest on such delay, which is caused due to the prolonged adjudication of the said claim petition.

23. Accordingly, the impugned order dated 16th February, 2016 is set aside and for proper adjudication of the claim, this Court directs that the instant matter be remanded back to the learned Tribunal.

24. The learned Tribunal is directed to decide the claim petition after giving the opportunity to the appellant/claimant to adduce the evidence in accordance with law.



25. In view of the fact that the claim petition is pending since August, 2013, this Court directs the learned Tribunal to adjudicate the claim petition and decide the same expeditiously without granting unnecessary adjournment to either party.

26. Accordingly, the claim petition shall be listed before learned Tribunal on 9th October, 2024 for the purpose fixed.

27. In view of the abovesaid terms, the instant appeal stands disposed of along with pending applications, if any.

CHANDRA DHARI SINGH, J

SEPTEMBER 19, 2024

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Click here to check corrigendum, if any