HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 427/2018

1. Smt. Usha W/o Late Narpatraj,
2. Yash S/o Narpatraj,
3. Dheeraj S/o Late Narpatraj, All By Caste - Mali, Resident Of Sojat City, Tehsil - Sojat, District - Pali Rajasthan. Appellant No. 2 And 3 Minors Through Natural Guardian And Mother Appellant No. 1.

----Appellants

Versus

1. Ghansyam Deora S/o Ramchandra Deora, By Caste - Mali, Pawti Ka Baas, Sojat City, Pali Raj..
2. National Insurance Company Limited, Branch Office- Old Bus Stand, Pali.
3. Teekamchand S/o Bhanwarlal, By Caste - Mali, R/o Bera Bijudiya, Tehsil - Sojat, Pali Deceased

----Respondents

For Appellant(s) : Mr. Ravi Panwar

HON'BLE MS. JUSTICE REKHA BORANA

Order

19/01/2024

1. The present appeal has been preferred against the judgment/award dated 10.06.2014 passed by the Motor Accident Claims Tribunal in Case No.11/2012 whereby the claim petition as preferred by the claimants had been rejected.

2. Office had pointed out four defects in the appeal;

firstly, the appeal is barred by 1190 days;

secondly, page Nos.2 to 6 of memo of appeal had not been filed;

thirdly, there was no signature of the counsel available on the prayer; and

fourthly, court fee had not been affixed on the judgment.

3. So far as defect Nos.3 & 4 are concerned, the same were subsequently cured. However, neither the application under Section 5 of the Limitation Act for condonation of delay was filed nor were page Nos.2 to 6 of the memo of appeal filed. On 26.04.2018, four weeks' time was granted to learned counsel for the appellant by the Registrar(Admn.) to cure the defects. However, the defects were not cured. The matter was then listed before the Court on 24.11.2023 and further on 15.12.2023.

4. On 15.12.2023, a submission was made by learned counsel before the Court that the application under Section 5 of the Limitation Act has been filed by him on that date and also that defect No.2 has been removed. On said submission being made on behalf of learned counsel for the appellant, the Court directed the Registry to verify the same and proceed further. The matter was then directed to be listed on 19.01.2024, that is, today.

5. As per the office report dated 15.01.2024, defect Nos.1 & 2 have not been removed. Meaning thereby, no application under Section 5 of the Limitation Act has been filed and page Nos.2 to 6 of the memo of appeal have also not been filed therefore, it is clear that an incorrect submission was made by learned counsel on 15.12.2023. Further, a perusal of page Nos.1 & 7 of the memo of appeal as filed, shows that on page No.1 is the cause title of the appeal and on page No.7 is the anciliary/alternative prayer made which reads as under:

> *"Any other appropriate order or direction which this Hon'ble Court deems fit in the circumstances of the case may be passed in favour of the appellant."*

Meaning thereby, neither is there any ground available on record on which the impugned judgment/award has been challenged nor any prayer has been made for quashing/setting aside of the said impugned judgment/award. By all means, there is no challenge to the impugned judgment/award and hence, the appeal which has only two pages i.e. the cause title and anciliary/ alternative prayer cannot be deemed to be an appeal in terms of law. There is nothing available on record to entertain the present appeal.

6. The present appeal is hence, **dismissed**.

(REKHA BORANA),J

17-T.Singh/-