

Court No. - 17

Case :- WRIT - C No. - 1000917 of 2003

Petitioner :- United India Insurance Co. Ltd. Thru Its Divisi0nal Manager

Respondent :- Motor Accident Claim Tribunal

Counsel for Petitioner :- Shishir Pradhan

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Shishir Pradhan, learned counsel for the petitioner and Dr. Udai Veer Singh, learned Additional Chief Standing Counsel for the State-opposite party.

2. The present writ petition is directed against the order dated 17.2.2003 passed by the Motor Accident Claim Tribunal/VIth Additional District Judge, Raebareli (for short 'the Tribunal') in Misc. Case No.1 of 2002, United Insurance Company Limited Vs. Smt. Mithilesh Sharma, whereby the application filed by the petitioner-Insurance Company to recall the award dated 29.8.2001 passed in Claim Petition No.198 of 1999 was dismissed along with application filed for condonaton of delay in filing the application under Order 9 Rule 13 CPC.

3. Opposite party no.2 along with her five minor children filed Claim Petition No.198 of 1999 before the Tribunal, Raebareli as the husband of opposite party no.2 had died in an accident. The said claim petition was contested by the Insurance Company. The Insurance Company had filed written statement to the claim petition. However, it appears that later on, counsel for the Insurance Company abstained and did not appear in the claim petition. The Tribunal vide ex-parte judgement and award dated 29.8.2001 awarded compensation to the tune of Rs.11,94,472/- with 10% simple interest per annum in favour of opposite party no.2.

4. After the award, the Insurance Company filed an application

under Order 9 Rule 13 CPC along with an application for condonation of delay under Section 5 of the Indian Limitation Act on 19.12.2001. The Tribunal vide impugned order dated 17.2.2003 had not only rejected the application for condonation of delay in filing the application under Order 9 Rule 13 CPC, but also dismissed the said application filed under Section 5 of the Indian Limitation Act and directed for initiation of proceedings under Section 340 Cr.P.C. against the Insurance Company as allegedly they had fabricated the documents filed in support of the application.

5. This Court has perused the impugned order and does not find that the Tribunal did commit any error of jurisdiction or law. The impugned order passed by the Tribunal is well reasoned order. The Tribunal has specifically recorded that despite the knowledge of the ex-parte judgement and award dated 29.8.2001, no immediate steps were taken by the Insurance Company for filing the application under Order 9 Rule 13 CPC. The application was dated 19.12.2001. Affidavit in support of the application was prepared on 19.1.2002. The application dated 19.12.2001 was filed only on 19.1.2002. In view of the aforesaid, the application filed for condonation of delay in filing the application under Order 9 Rule 13 CPC was dismissed and the application for recall of the order was also dismissed.

6. This is the second writ petition filed by the Insurance Company before this Court. Earlier the Insurance Company had approached this Court by filing Writ Petition No.68 (MS) of 2003 against the recovery certificate issued in pursuance of the award passed by the Tribunal.

7. It is very unfortunate that the victims have not been paid the compensation, which was awarded to them way back in the year 2001. This Court on 26.3.2003 had stayed the impugned

order without recording any reason whatsoever. The order dated 26.3.2003 is reproduced below:-

"Admit.

Issue notice to opposite parties no.1 and 2.

The operation of the impugned award contained in Annexure No.1 to the writ petition is stayed till next listing."

8. It is really painful to notice that the victims, whose bread earner had died leaving behind widow and five children, had to suffer so much because of the pendency of this writ petition before this Court for almost 20 years.

9. In view thereof, the writ petition is **dismissed** without being any merit and substance. Petitioner-Insurance Company is directed to deposit the entire amount of the compensation along with interest as directed by the Tribunal within a period of one month from today in the Tribunal. In case the amount as directed, is not deposited, the District Magistrate, Raebareli shall proceed against the petitioner-Insurance Company to recover the amount of award along with interest as arrears of land revenue and deposit the same in the Tribunal. However, if the amount and interest in pursuance to the award has already been paid, then the District Magistrate is not required to proceed for recovery. The Tribunal will verify this fact and then pass appropriate orders, if necessary.

10. Since the petitioner-Insurance Company has kept the litigation alive for almost 20 years before this Court, the Insurance Company is saddled with cost of Rs.5,00,000/- (Rupees Five Lakhs) to be deposited with the Tribunal within a period of ten days, which should also be disbursed in favour of the claimants-opposite party no.2 after due verification. This exemplary cost has been imposed on the Insurance Company as they had made the complainant and her five minor children suffer beyond imagination. If the money awarded was paid on

time, the victims could have built up their lives.

11. Let a copy of this order be forwarded to the Motor Accident Claims Tribunal, Raebareli and the District Magistrate, Raebareli for compliance forthwith.

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(Dinesh Kumar Singh, J.)

Order Date :- 14.3.2022

Rao/-