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BITHIKA MAZUMDAR AND ANR.

v.

SAGAR PAL AND ORS.

(Civil Appeal No. 1311 of 2017)

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FEBRUARY 01, 2017

[A. K. SIKRI AND R. K. AGRAWAL, JJ.]

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*Constitution of India – Art. 227 – Power of superintendence over all courts by the High Court – Motor accident claim petition by appellants-legal heirs of deceased, returned by the court on the ground of territorial jurisdiction – Review petition thereagainst also dismissed – Petition u/Art. 227 by the appellants – Dismissal by High Court, on the ground of delay and laches – On appeal held: No limitation is prescribed for filing application u/Art. 227 – Petitioner who files such a petition is supposed to file the same without unreasonable delay and if there is a delay that should be duly and satisfactorily explained and then the petition could be entertained on merits – On facts, High Court dismissed the petition holding that though there is no statutory period of limitation prescribed, such a petition should be filed within a period of limitation as prescribed for applications u/s. 115 CPC – Sufficient reasons were given by the appellants in the petition filed u/Art. 227 – Moreover, the High Court should have also kept in mind that the deceased was the only earning member, died in the said accident and appellants are the widow and minor daughter of the deceased – High Court should have considered the revisional application on merits rather than dismissing the same – Order of the High Court is set aside – For awarding compensation, multiplier of 15 is applied, keeping in view the age of the deceased as 40 years and that he was getting a salary of Rs. 5,000/- pm – Appellants awarded total compensation of Rs.8 lakhs along with interest @ 9% pa – Appellants also entitled to cost of Rs. 50,000/- – Costs – Motor accident – Compensation – Delay and laches.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1311 of 2017.

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From the Judgment and Order dated 18.03.2015 of the High Court of Calcutta in C. O. No. 824 of 2015.

Bijan Kumar Ghosh, Ujjwal Banerjee, Asit Kumar Rari, Ms. Ratna Banerjee, Mrs. Sarla Chandra, Advs. for the Appellants. A

A.K. Raina, Binay Kumar Das, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. Leave granted. B

2. The appellants herein are the legal heirs of one Gautam Mazumdar (hereinafter referred to as the 'deceased') who died on 06.05.2007 in a road accident allegedly due to rash and negligent driving of goods carriage vehicle, when, according to the appellants, the said goods carriage vehicle bearing No. W.B.41/8002 plying on G.T. Road towards Durgapur to Asansol came from behind with high speed without headlights and ran over Gautam Mazumdar, a pedestrian, and fled away from the place of accident rather than helping the injured. The victim died on the spot due to the said accident. The vehicle was insured by respondent No. 3-New India Assurance Company Limited. The appellants herein (who are the widow and minor daughter of the deceased) filed the claim for compensation because of the demise of Gautam Mazumdar in the said accident before the Motor Accidents Claims Tribunal, City Civil Court, Calcutta (hereinafter referred to as 'MACT'). MACT went ahead with the trial and recorded the evidence of the parties. However, ultimately vide its orders dated 18.06.2009, MACT held that Kolkata Court did not have territorial jurisdiction to entertain the same and returned the said petition filed by the appellants for presentation thereof, in the Court of law competent to decide the said claim. The appellants filed review petition against that order which was also dismissed vide orders dated 10.04.2013. C  
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3. Challenging this order, the appellants filed petition under Article 227 of the Constitution in the High Court of Calcutta which has been dismissed by the High Court on the ground of delays and laches stating that though MACT had dismissed the review petition of the appellants vide orders dated 10.04.2013, revisional application challenging that order was filed only on 03.03.2015 after a delay of almost 2 years. Challenging that order, the present special leave petition is filed in which we have granted leave as aforesaid. F  
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4. It is an admitted position in law that no limitation is prescribed for filing application under Article 227 of the Constitution. Of course, the petitioner who files such a petition is supposed to file the same without H

A unreasonable delay and if there is a delay that should be duly and satisfactorily explained. In the facts of the present case, we find that the High Court has dismissed the said petition by observing that though there is no statutory period of limitation prescribed, such a petition should be filed within a period of limitation as prescribed for applications under Sections 115 of the Code of Civil Procedure. This approach of the High Court cannot be countenanced. As mentioned above, in the absence of any limitation period, if the petition is filed with some delay but at the same time, the petitioner gives satisfactory explanation thereof, the petition should be entertained on merits.

C 5. In the present case, we find that sufficient reasons were given by the appellants in the petition filed under Article 227. Moreover, the High Court should have also kept in mind that Gautam Mazumdar, who was the only earning member, died in the said accident and appellants are the widow and minor daughter of the deceased. In a case like this, the High Court should have considered the revisional application on merits rather than dismissing the same on the ground of delay.

D 6. In the aforesaid circumstances, the order of the High Court does not stand judicial scrutiny and, therefore, is liable to be set aside.

E 7. At this stage, learned counsel appearing for the appellants has submitted that Gautam Mazumdar had died in the accident on 06.05.2007, i.e., more than 9½ years ago and the appellants have still not been given any compensation. In these circumstances, his prayer is that since the entire evidence is available in respect of the earnings of the deceased and also that there is no dispute about the fact that he was 40 years of age at the time of the accident, this Court itself can fix the compensation on the basis of the aforesaid material which is placed on record. Learned counsel for the respondents also is agreeable for fixing the compensation by this Court in the aforesaid peculiar and unprecedented circumstances.

F 8. We find that the deceased was an employee and his employer, Ashok K. Shaw had appeared in the witness box as PW-2 before the MACT. He had deposed that the deceased was employed with him and was getting a salary of Rs.5,000/- per month. In this manner, the annual income of the deceased comes to Rs.60,000/-. We may assume that 1/3 of this income the deceased was spending on himself and the balance thereof, he was contributing to his family, i.e., the appellants herein. In this way, after adjusting 1/3 of the income, the annual contribution for the appellants herein would be Rs.40,000/-. Keeping in view the age of

the deceased as 40 years. for awarding compensation, multiplier of 15 shall be applicable and after applying the same, the compensation is worked out at Rs.6 lakhs. We grant another sum of Rs.2 lakhs for loss of consortium to the appellants. In this manner, a total compensation of Rs.8 lakhs is fixed. A

9. The appellants shall also be entitled to interest thereupon from the date of filing of the petition before MACT at the rate of 9 per cent per annum. However, from the aforesaid period, a period of two years shall be excluded which is to be attributed to the appellants in preferring the revision application before the High Court. The appellants shall also be entitled to cost of these proceedings which we quantify at Rs.50,000/-. The aforesaid amount shall be paid within a period of eight weeks from today. B C

10. The appeal stands disposed of.

Nidhi Jain

Appeal disposed of.