

(2002) 08 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 2790 of 2002

Amish Ravindra Kondra

APPELLANT

Vs

Motor Accidents Claims Tribunal and Another

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2003) 1 ACC 580 : (2002) ACJ 1755

Hon'ble Judges : Ranjana Desai, J;A.P. Shah, J

Bench : Division Bench

Advocate : M.B. Kotak, for the Appellant; P.K. Khemani, A.G.P., for the Respondent

Judgement

A.P. Shah and Ranjana Desai, JJ.—Rule. The learned A.G.P. waives service on behalf of the respondents. By consent, taken up for hearing forthwith.

2. The petitioner claims to be a musician by profession. On 9.11.2000, he was seriously injured in a vehicular accident. He filed an application for compensation under Sections 140 and 166 of the Motor Vehicles Act, 1988 ("the said Act" for short) in the Motor Accidents Claims Tribunal at Mumbai. The facts relating to the accident are not material for the purpose of disposal of this petition because the petition does not rest on them. Being frustrated by the procedure adopted by the Motor Accidents Claims Tribunal ("the Tribunal" for short) and the resultant delay caused in disposal of the application, the petitioner has approached this court. His prayers are aimed at securing better working of the Tribunal and expeditious disposal of the applications so as to minimise the hardships of the victims.

3. Basically, the petitioner has made two grievances. Firstly, it is stated that about 2000 ready packets are awaiting service. No postal stamps are supplied to the Tribunal and hence, service of the court notices is not being effected. Secondly, it is contended that speed is the essence of this jurisdiction which is described by the Supreme Court as a compassionate jurisdiction. The applicants, who are victims of accidents, are already under trauma. Most of them come from

a poor strata of the society. They are in urgent need of money having spent lot of their money on medical treatment. Section 140 of the said Act provides for compensation in certain cases on principle of "no fault liability". Applications u/s 140 have to be decided urgently on priority basis because, they provide some sustenance to the victims. In this connection, the learned counsel has relied on the judgments of this court in Vishwanath Mahalu Gondhali and another Vs. Ramanlal Deoram Tamboli and another, and Pandurang Narayandas Sarda Vs. Subhash Gopal Changale and Others, The learned counsel has also drawn our attention to Section 140 of the said Act and Rules 255 (3) and 260 (3) of the Maharashtra Motor Vehicles Rules, 1989 ("the said Rules" for short). He submitted that these provisions indicate the intention of the legislature to secure speedy disposal of the applications u/s 140 of the said Act. The learned counsel submitted that in petitioner's case issue notice order was passed on 17.7.2001 and the case was adjourned to 4.10.2001. Application u/s 140 of the said Act was kept for hearing and the returnable date was 13.12.2001. Thereafter, the application was posted for hearing on 27.3.2002. On 27.3.2002, a fresh order to furnish a stamped envelope, under certificate of posting was passed and the application was fixed for hearing on 18.6.2002. He submitted that in such manner the applications u/s 140 are being adjourned, thus frustrating the very purpose of the applications. The learned counsel, therefore, urged that some specific directions be issued to the Motor Accidents Claims Tribunal, to remedy this.

4. On 27.7.2002, this court had directed the Tribunal to submit a report in respect of the grievance made by the petitioner about delay in service for want of postal stamps. Accordingly, the Chairman of the Tribunal has submitted a report to this court which is dated 29.7.2002. The said report is taken on record.

5. We have perused the said report, so have the learned counsel for both sides. So far as the first grievance of the petitioner regarding non-availability of postal stamps is concerned, in our opinion, the said grievance is sufficiently redressed. The report indicates that a Franking machine has been purchased by the Tribunal. A licence has been obtained to operate the said machine and it is expected to start within a short period after required formalities are completed. We need not, therefore, delve on this issue further.

6. So far as the grievance of the petitioner about delay in disposal of the applications is concerned, the following reasons are given in the report:

- (1) Advocates ask for longer dates for producing necessary documents.
- (2) Advocates ask for longer dates for furnishing full and correct address of opposite party and if opposite party is reported dead, to bring his legal heirs on record.
- (3) Advocates do not remove the office objection.
- (4) If a short date is given, the court will be overcrowded and board will be

heavy. Therefore, main claim applications u/s 166 may not reach for recording evidence.

(5) The proper insurance company is not brought on record, the learned advocates for the applicant seek time to find out the correct insurance company.

(6) The advocates for insurance company and the applicant seek longer dates for confirmation of policy and settlement for the entire claim.

7. There can be no dispute that the applications filed in the Tribunal need to be decided expeditiously. The victims of the accident need urgent help. If such applications are kept pending for years together, they would be put to untold miseries. Ideally, all applications should be decided expeditiously, but more so, applications u/s 140 of the said Act. It is important to note that u/s 140 of the said Act, a claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle concerned or any other person. Sub-section (4) of Section 140 of the said Act provides that a claim for compensation under Sub-section (1) of Section 140 shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Therefore, this provision is meant for providing urgent relief to the victims.

8. Rule 255 of the said Rules deals with application for compensation under Sub-section (1) of Section 140 and Rule 255 (3) states that the Claims Tribunal shall strive to dispose of such applications within 45 days from its receipt and if there is any delay in its disposal, shall record the reasons for the same. Rule 260 (3) states that where the applicant makes a claim for compensation u/s 140, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on the date not later than fifteen days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The rule further says that the Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex pane on the presumption that they have no contention to make against the award of compensation. These two rules emphasise the need for speedy disposal of applications u/s 140.

9. In Vishwanath Mahalu Gondhali and another Vs. Ramanlal Deoram Tamboli and another, while dealing with similar provision, i.e., Sections 92-A and 92-B under the Motor Vehicles Act, 1939, this court observed that:

The object of the provisions of Sections 92-A and 92-B is to speed up payment of compensation on no fault principle. The legal representatives of the victim are under these beneficial provisions entitled to get the minimum statutory relief

expeditiously.

This court further observed that:

When under these provisions, speed is the essence, such delay is akin to injustice and a breach of the legislative mandate. These provisions constitute a measure of social justice. It is time that the Tribunals awaken themselves to the beneficent objects thereof.

Similar view was expressed by a Division Bench of this court in Pandurang Narayandas Sarda Vs. Subhash Gopal Changale and Others, The necessary conclusion from the aforesaid discussion is that the applications u/s 140 of the said Act will have to be decided expeditiously.

10. The Tribunal has, in its report, pointed out that the delay is also caused because of the inaction or lethargy on the part of the advocates. Speedy disposal of cases can be achieved only if there is cooperation between the Presiding Officer, the advocates and the parties. It is only if they make joint efforts, can they achieve the objective of speedy disposal. We hope that the advocates cooperate with the court and strengthen its hands.

11. In the circumstances of the case, in our opinion, the following directions will serve the ends of justice:

(i) Tribunal shall scrupulously follow Rules 255 (3) and 260 (3) of the Maharashtra Motor Vehicles Rules, 1989;

(ii) Ordinarily the notice period provided in Rule 260 (3) of the said Rules shall not exceed 15 days from the date of issue of such notice contemplated therein;

(iii) Only in exceptional cases can the Tribunal extend the said period of 15 days, but while extending it beyond the period of 15 days the Tribunal will have to record reasons in writing as to why the period is so extended;

(iv) In no case, however, the notice period shall extend beyond the period of four weeks from the date of issue of such notice.

12. We once again emphasise the need to scrupulously observe Rules 255 (3) and 260 (3) of the said Rules. The advocates and the parties should cooperate with the Presiding Officer in his efforts to secure compliance of the said Rules and the present order.

13. With the above directions, the writ petition is disposed of.

14. Authorities to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.