
(1980) 08 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 3810 of 1978-C

Annamma Philip

APPELLANT

Vs

The Accidents Claims Tribunal and Others

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 6 Rule 17
Kerala Motor Accidents Claim Tribunal Rules, 1977 — Rule 21, 3, 6
Motor Vehicles Act, 1939 — Section 110A, 110C(2)

Citation : AIR 1980 Ker 196 : (1980) 2 ILR (Ker) 620

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : P.C. Balakrishna Menon, for the Appellant; V.R. Venkatakrishnan and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Bhaskaran, J.—The petitioner, Smt. Annamma Philip, is the widow of one Sri T. V. George, who died on 25-5-1975 at the Medical College Hospital, Calicut, of injuries sustained by him at 5 p.m. on 22-5-1975 as a result of the accident involving stage carriage bus No. KLZ 1065, known as Kissan Roadways, owned and managed by the 2nd respondent at Perumkulam on the route Palamadu-Edakkara. The first respondent is the Accidents Claims Tribunal, Manjeri (now Motor Accidents Claims Tribunal, Kozhikode), the 3rd respondent the Kerala State Insurance Department, Trivandrum, the 4th respondent the New India Assurance Company, Calicut, and the 5th respondent the driver of the vehicle at the time of accident. M. A. C. No. 21 of 1975 on the file of the 1st respondent is an application for compensation filed by the petitioner u/s 110-A of the Motor Vehicles Act, 1939 (the Act). Subsequently having come to know that a form for application for compensation has been prescribed under Rule 3 of the Kerala Motor Accidents Claims Tribunals Rules, 1977, (the Tribunals Rules), which came into force on 25-7-1977 "to regularise the proceedings", the petitioner filed an application in the said form, a copy of which is Ext. P-I, in effect in substitution of

the application which had been filed as M.A.C. No. 21 of 1975. The form prescribed, it may be noticed, does not contain anything by way of cause title; the relevant particulars are all to be furnished against 28 items, the form itself being substantially in the nature of a questionnaire; the petitioner, however, in Ext. P-1 added a cause title also, arraying herself as the petitioner and respondents 2 to 4 herein as respondents 1 to 3. At a later stage, having realised that the driver of the vehicle (5th respondent herein) would be a necessary, or at least a proper party, the petitioner filed before the 1st respondent two applications, I. A. Nos. 368 and 369 of 1978, the former being one for impleading the 5th respondent herein as the 4th respondent in M.A.C. No. 21 of 1975, and the latter for carrying out the amendment consequent to the impleading. Both these petitions were dismissed by the 1st respondent as per orders dated 6-6-1978, the true copies of which are Exts. P-2 and P-3 in the writ petition, holding that the impleading petition was barred by limitation. The petitioner seeks to have these orders quashed by the issue of a writ of certiorari, contending inter alia that they are vitiated by errors of law apparent on the face of the record and illegality.

2. Only respondents 3 and 5 herein are seen to have filed counter-affidavits. The counter-affidavit of the 3rd respondent is rather formal in nature. In his counter-affidavit, the 5th respondent has stated inter alia that there was no scope for interference with the orders impugned as the applications on which they were passed had been filed only nearly one year after the date on which the rules came into force, and three years after the occurrence of the accident. Shri V. R. Venkatakrishnan, the counsel for respondents 2 and 5, during the course of his argument has also raised a technical ground that the applications were really misconceived, as the 1st respondent, in terms of the provisions of the Act and the Tribunals Rules had no jurisdiction to bring on record new parties to the proceedings. He pointed out that the powers of a Civil Court to be exercised by the Tribunal are limited to those enumerated under Rule 21 of the Tribunals Rules read with Section 110-C (2) of the Act. It is his contention that the enumerated powers conferred on the Tribunal do not take in a power to implead parties, and, therefore, a power similar to what is contained in Order I, Rule 10 (2) of the Civil P. C. which empowers the Court at any stage of the proceedings to order the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before Court may be necessary in order to enable the Court to effectively and completely settle all the questions in the suit, to be added cannot be exercised by the Tribunal. Section 110-C (2) of the Act and Rule 21 of the Rules are quoted below:--

"110-C. Procedure and powers of Claims Tribunals. -- (1)

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be

deemed to be a Civil Court for all the purposes of Section 195 and Chap. XXVI of the Criminal P. C., 1973 (2 of 1974)."

"21. CPC to apply in certain cases. -- The provisions of Rules 9 to 13 and 15 to 30 of Order 5, Rules 16 to 18 of Order 6, Order 9, Rules 3 to 10 of Order 13, Rules 1 to 21 of Order 16, Rules 1 to 3 of Order 23, Order 26 and Order 33 of the First Schedule to the Civil Procedure Code, 1908, shall, so far as may be, apply to the proceedings before the Claims Tribunal."

3. Sri P. C. Balakrishna Menon, the counsel for the petitioner, submitted that in a strict sense the impleading petition itself was not necessary inasmuch as the form prescribed by Rule 3 of the Rules does not provide for what is known as cause title, all the relevant facts being required to be found in answers given in an itemised manner in the form. Item 16 relates to the owner of the vehicle, item 17 to the Insurers and item 18 to the driver of the vehicle. As against item 18 the name and address of the 5th respondent had already been furnished by the petitioner in Ext. P-I application.

4. From the scheme of the Act and the Rules it is clear that the object of constituting Claims Tribunals u/s 110 of the Act is for adjudicating upon claims for compensation in respect of accidents involving death or bodily injury arising out of the use of motor vehicles. As stated in Section 110-A the institution of the proceeding is by an application for compensation in the form prescribed. u/s 110-A (3) the period of limitation for such application is six months from the date of the occurrence of the accident; but the application could be entertained by the Claims Tribunal even after the expiry of 6 months by virtue of the proviso to that sub-section if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Section 110-B of the Act provides as follows :--

"110-B. Award of the Claims Tribunal. - On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be." The provision in Section 110-B that "in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be"

is of great significance. The driver of the vehicle is not a class of person specifically excluded from the liability to pay compensation; whether he would be liable to pay any compensation at all and, if so, whether the whole or part thereof, are all matters to be determined in the award to be passed by the Claims Tribunal on the evidence adduced before it. Rule 6 (i) of the Rules reads

as follows :--

"6. Notice to parties involved. -- (i) If the application is not dismissed under Rule 5, the Claims Tribunal shall send to the owner of the Motor Vehicle involved in the accident, its insurer and its driver a copy of the application together with a notice of the date on which it will hear the application, and may call upon the parties to produce on that date any evidence which they may wish to tender."

The scheme of the Act and the Rules appears to be that the applicant should furnish against items 16, 17 and 18 in the form prescribed the relevant particulars concerning the owner, the insurer(s) and the driver of the vehicle involved in the accident, and then it is for the Claims Tribunal to issue notice to each of them with a copy of the application, intimating the date on which it may hear the application, and call upon them to produce any evidence which they may wish to tender. This being the position, the cause title voluntarily added, later sought to be amended, by the petitioner was redundant. This controversy could have been avoided but for the petitioner having adopted the conventional method of having a cause title without noticing that the cause title was not really contemplated in view of the provisions contained in Rule 6 of the Rules and in the nature of the form prescribed under Rule 3 of the Rules.

5. While Section 110 of the Act ousts the jurisdiction of the Civil Court, Section 110-C (2) of the Act confers on the Claims Tribunal all the powers of a Civil Judge for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents. Rule 21 of the Rules also makes certain provisions of the Code of Civil P. C., as far as may be, applicable to the proceedings before the Claims Tribunal. It is, therefore, clear that the jurisdiction of the Civil Court is ousted with respect to the claims for compensation, and the Claims Tribunal constituted for the purpose of discharging the duties which otherwise would have ordinarily fallen on the Civil Court. For all intents and purposes the Claims Tribunal is a Civil Court discharging the functions in the same manner as would have been done by a Civil Court. No doubt, the provisions which we have already noticed in the Act and the Rules are silent about the competence of the Claims Tribunal to implead parties; It has, however, to be noticed that there is no prohibition against the Tribunal exercising the power of impleading parties. The Madras High Court in *Union of India v. P. Kailasam* 1974 A CJ 488 has upheld the contention that under Order 1. Rule 10 (2) of the CPC the Motor Accidents Claims Tribunal was competent to implead parties in order to enable it to effectively and completely adjudicate upon and settle all the questions involved in the claim, This Court in *K. V. Aboo v. Commr. for Workmen's Compensation* 1977 ACJ 446 : 1977 Lab IC 92 has held that though the provisions of Order I Rule 10 as such have not been specifically made applicable to proceedings under the Workmen's Compensation Act, there is no prohibition in the Act and the rules framed thereunder that a person cannot be brought on record subsequent to the filing of the application; and that the principle of inherent power to remedy injustice applies to quasi-

judicial authorities like the Commissioner for Workmen's Compensation. The Supreme Court in State of Haryana Vs. Smt. Darshana Devi and Others, has approved the reasoning of the High Court of Gujarat to hold that Order 33 of the C. P. C. would apply to Motor Accidents Claims Tribunals which have the trappings, of a Civil Court.

6. There could, therefore, be no doubt that the contention of Sri Venkatakrishnan that the Claims Tribunal under the Motor Vehicles Act has no jurisdiction to implead parties is patently wrong. The 1st respondent was also in error in dismissing the applications for impleading and amendment without noticing the fact that it was rather formal in nature. The Claims Tribunal also ought to have found that by virtue of the proviso to Section 110-A (3) it was competent to entertain an application even after the expiry of the period of six months if it is satisfied that the applicant was prevented by sufficient cause in making the application in time. Under Rule 3 (2) of the Rules any application which was found defective on scrutiny was to be returned by the Tribunal for being submitted after curing the defects within a specified time not exceeding two weeks; this did not happen in this case. I would, therefore, quash Exts. P-2 and P-3 and direct the 1st respondent (Motor Accidents Claims Tribunal, Kozhikode) to consider and dispose of the application for impleading and amendment according to law and in the light of the observations contained in this judgment without delay. As the claim had been pending for five years now, the 1st respondent would see to it that the claim itself is disposed of and the award passed within 4 months from this date. The writ petition is disposed of with the above directions, There will be no order as to costs.

Communicate a carbon copy of this judgment forthwith to the 1st respondent (Motor Accidents Claims Tribunal, Kozhikode) for compliance. Issue carbon copies to the counsel for the petitioner and the counsel for respondents 2 to 5 on usual terms if applied for in that behalf.