

(2009) 07 JH CK 0012
In the Jharkhand High Court

Arjun Kondankal and Others

APPELLANT

Vs

Rando Kondankal and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 143

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal by the claimants-appellants is directed against the judgment and award dated 7.9.2005 passed by the Motor Accident Claims Tribunal, Chaibasa in Condensation Case No. 32 of 2008 whereby he has dismissed the claim application on the ground of limitation.

2. The appellants filed an application for compensation on account of death of their brother in a motor accident which occurred on 10.2.1998. The deceased was aged about 10.2.1998 and was working as a daily-waged labourer. While coming from his work in the evening, he was dashed by a tractor which was coming in high speed. The Tribunal framed the following issues for consideration:

- 1) Is the suit maintainable in its present form?
- 2) Whether the claimants have proper cause of action to file the suit?
- 3) Whether the suit is barred by law of limitation, as it has been filed after more than three years of the alleged accident?
- 4) Whether the driver of the offending tractor was driving the tractor rashly and negligent I which caused the accident?
- 5) Whether claimants are entitled for compensation and if they are then from whom and for what amount they are entitled?

6) Whether the claimants are entitled to any other relief or reliefs?

3. The Tribunal decided all the issues in favour of the claimants except the issue of limitation after taking notice that the deceased died on 10.2.1998 and the claim application was filed on 10.9.2001 i.e. after three years from the date on death of the deceased. The Tribunal was of the view that since no limitation is provided u/s 166 of the Motor Vehicles Act, Article 113 of the Limitation Act, 1963 is applicable and in such case, the period of limitation is three years. For better appreciation, paragraph 10 of the impugned judgment is quoted herein below:

Issue No. 3: From perusal of record it appears that suit for compensation was filed on 10.9.01. From the claim petition and Ext. 1 and 2 it appears deceased died on 10.2.98. Thus this suit has been filed after more than three years of death of the deceased. Learned Counsel appearing on behalf of claimants submitted that after repealing of Sub-section 3 of Section 166 of Motor Vehicle Act there remains no limitation to file a suit for compensation for loss caused in a road accident. Learned Counsel submitted that provision for compensation under Motor Vehicle Act are made as a social legislation, hence no limitation has been provided. Learned Counsel appearing on behalf of O.Ps. admitted that this enactment has been made as a social legislation. Learned Counsel appearing on behalf of O.P. No. 3 submitted that though no provision of limitation has been given in M.V. Act there must have some limitation to file such suit.

11. From perusal of record it is clear that this suit has been filed after more than three years of the accident from which cause of action arose. In M.V. Act previously by subsection 3 of Section 166 limitation of six month was provided but there was discretion to tribunal to condone the delay in appropriate cases up to one year. After repealing of Sub-section 3 of Section 166 this provision was abolished. It does not mean that after abolition of this provision, no limitation remains to file the suit for compensation arising out of accident. If there remains no limitation a state of chaos will occur. A great great grand son of deceased can file a suit against great great grand son of an owner of the offending vehicle for compensation for the loss caused in any road accident, occurred hundreds of years ago. It is settled law that suit filed under special law are guided by Limitation Act, 1963, if no enactment has been made in the relevant law. Article 113 of Limitation Act, 1963 is applicable in such cases and period of limitation in such cases is three years. In this case on date of accident right to sue accrued. This suit is certainly barred by the provision of Article 113 of the Limitation Act. In this case no reason has been shown on behalf of claimants for filing the suit after lapse of three years. No prayer for condonation of delay was also made by the claimants. Thus considering the facts and circumstances of the case I hold that suit is barred by provision of Limitation Act 1963. Accordingly this issue is decided against the claimants.

4. Prima facie we are of the view that the Tribunal has committed serious error of law in deciding the issue of limitation. Admittedly after repeal of Sub-section (3)

of Section 166 of the Act, there is no limitation provided for filing application for compensation. The effect of omission of Sub-section (3) is that there is no limitation for filing claim application before the Tribunal. The Parliament in its wisdom thought it proper not to put any restriction in the power of the Tribunal to entertain claim application for compensation in case of death or bodily injury by the use of the motor vehicle. Undoubtedly, the Motor Vehicle (Amendment) Act, 1994 is beneficial piece of Legislation and, therefore, the rightful claim of the victims may not be defeated merely because of delay in filing the claim application.

5. In the instant case, it has come in evidence that the deceased was aged 22 years and was a young man. He died leaving behind his mother and two minor brothers. The mother subsequently died out of shock due to death of her only earning son. The mother and two minor brothers were dependent on the earning of the deceased. On these admitted facts and evidence, the Tribunal ought to have entertained the application for the grant of compensation.

6. Having regard to the facts and circumstances of the case, we, therefore, allow this appeal and set aside the finding recorded by the Tribunal on the issue of limitation holding that the claim application is fit to be entertained. Since the Tribunal has also decided other issues including the quantum of compensation, we affirm those findings and hold that the appellants are entitled to compensation as assessed by the Tribunal in the impugned judgment.