
(1980) 12 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 33 of 1972

Asa Singh and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 30-12-1980

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 110A, 110B

Citation : AIR 1981 HP 75 : (1981) 10 ILR HP 81

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : K.D. Sud, for the Appellant; Inder Singh, General and S.P. Gupta, Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.S. Thakur, J.—The appellants filed a claim petition before the Motor Accidents Claims Tribunal (the Tribunal in short) Mahasu District, on account of the death of Shri Manjeet Singh in a jeep accident. The same was, however, dismissed by the aforesaid Tribunal on 25-7-1969. It was stated in the application that Manjeet Singh, aged 22 years, son of Asa Singh appellant and the brother of other petitioners/appellants was employed as a Sectional Officer in the Public Works Department of Himachal Pradesh, and at the time of the accident he was working in Gaura section of Ram-pur Bushahar. On 7-12-1967, he boarded jeep HIM-2458 belonging to the Rampur Division of the Public Works Department bound for Pachhada on Rampur Gaura road which was carrying diesel to the work site. The deceased was travelling in that jeep and was going on duty. At about 5 P. M. the jeep met with an accident at a place 4 miles and one furlong from the starting point of Rampur Gaura Road. The jeep rolled down some 500 feet in the nailah and Manjeet Singh died at the spot. It was averred that the driver of the jeep drove the jeep negligently as a result of which the front wheel of the jeep collided with a hillock and the rear wheel went out of the road. The driver lost control over the vehicle and the jeep ultimately fell into the nailah. The

appellants filed a claim petition claiming Rs. 50,000 as compensation from the respondents on account of the death of Manjeet Singh.

2. The claim of the appellants was opposed on numerous grounds. One of the grounds was that the application was barred by limitation as the same was filed after sixty days. The appellants had also filed a separate application purporting to be u/s 5 of the Indian Limitation Act for condoning the delay, mainly on the ground that he could not file the petition within time due to his ill health. The Tribunal, however, held that the applicant had been negligent in filing the claim petition and no sufficient cause had been shown to condone the delay. Accordingly, the claim petition was held time barred. It was, however, found that the application was maintainable under the Motor Vehicles Act. It was also found by the Tribunal that Manjeet Singh was on duty when the jeep met with the accident.

3. Aggrieved by the judgment of the Tribunal, the appellants preferred an appeal before this Court. It was contended by the appellants that the Tribunal had erred in holding that there was no sufficient cause proved for condoning the delay. It was also contended that the Tribunal failed to take notice of the fact that there were four minors and the provisions for payment of compensation in the Motor Vehicles Act had been made to protect the interests of aggrieved persons and the courts have to take a liberal view while construing the provisions of such Act. It was also contended that there was sufficient material on record to show that the petition could not be filed within time due to sufficient cause. The learned Judge, however, after considering the case law on the point, dismissed the appeal on the ground that the claim petition was barred by limitation.

4. The appellants filed a petition for seeking leave to file, a Letters Patent Appeal. The learned single Judge by an order dated 7-8-1972 was pleased to certify that the case was fit to file a Letters Patent Appeal, The appeal has been pending for disposal for quite a long time.

5. We enquired from the learned counsel for the appellants whether by now the appellants 2 to 5 have attained majority. It was stated by him that respondents 2 to 5 have become major and that he would file a separate power of attorney on their behalf in this Court.

6. It is contended by the learned counsel for the appellants that the provisions for the payment of compensation under the Motor Vehicles Act in the event of any accident, are in the nature of benevolent provisions. That being the position, the provisions have to be liberally construed in favour of an aggrieved party. It is further pointed out that the limitation for filing claim petition which was previously sixty days has been enhanced to six months with the manifest object of giving more time to an aggrieved party to claim compensation. The learned counsel has vehemently argued that in the instant case four of the appellants were minors and as such they were entitled to the benefit provided to such persons under Sections 6 and 7 of the Indian Limitation Act. It is further

submitted that Section 29 (2) of the Limitation Act applies even to the claim petitions under the Motor Vehicles Act. On this account it is contended that the learned single Judge as also the Tribunal have gravely erred in holding that the claim petition was barred by limitation. The accident is stated to have taken place on 7-12-1967 whereas the claim petition was filed on 7-6-1968. At the relevant time the limitation for filing a claim petition was sixty days. It was by Act No. 56 of 1960 that the limitation was raised from .sixty days to six months. In case the limitation at the relevant time had been six months, the claim petition would have been within limitation. Any way, it can be reasonably inferred from this substitution of limitation that it is meant to give a fairly longer time to an aggrieved party to take proceedings to claim compensation.

7. The first contention of the learned counsel for the appellants is that admittedly the appellants 2 to 5 were minors at the relevant time and in any event had not attained majority till the date of the filing of the claim petition before the Tribunal. This fact is not disputed even by the learned counsel for the respondents. If it is so, it is contended that the appellants 2 to 5 were entitled to the benefit of Sections 6 and 7 of the Limitation Act. u/s 6 of the Limitation Act. in the case of a minor, the claim petition could be filed after the disability had ceased. It is, however, provided u/s 7 of the Limitation Act that where one of several persons jointly entitled to institute a petition is under such disability, and a discharge cannot be given without the concurrence of such a person, time will not run against any one of them until one of them becomes capable of giving such a discharge without the concurrence of the others or until the disability has ceased. He has referred to a decision in Vasava Hiraben Vs. Ishwar Bharti Karsanbharti Gauswami and Another, Reference may be made to paragraph 5 of the judgment. In this paragraph the observations of the Supreme Court in The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another, have been quoted and the same can be reproduced with advantage (at p. 943 of AIR) : --

"We are of the view, in reiteration of earlier expression on the same lines, that public bodies should resist the temptation to take technical pleas or defeat honest claims by legally permissible but marginally unjust contentions, including narrow limitation..... it is doubtful morality to non-suit solely on grounds of limitation, a plaintiff who is taken in by seemingly responsible representation only to find himself fooled by his credibility..... public institutions convict themselves of untrustworthiness out of their own mouth by resorting to such defences."

It is further observed in this paragraph that (at p. 149 of AIR Guj) : --

"The law relating to compensation in motor accident cases has been enacted by the State for the benefit of the dependants of the unfortunate victims and it is surprising that when it comes to the implementation of the said law, the limbs of the State should try to defeat a claim not on merits but on technical pleas such as "narrow limitation". One could only hope that bearing in mind the injunction of

the Supreme Court in the abovementioned case, the second opponent would desist from raising such pleas in future at least in cases where the delay is not inordinate."

8. Our attention has been also drawn to the decision in *State of Haryana Vs. Smt. Darshana Devi and Others*, In paragraph 6 of the judgment, the Supreme Court observed as under: --

"The second principle, the State of Haryana has unhappily failed to remember is its duty under Article 41 of the Constitution to render public assistance, without litigation, in cases of disablement and undeserved want. It is a notorious fact that our highways are graveyards on a tragic scale, what with narrow, neglected roads, reckless, unchecked drivers, heavy vehicular traffic and State Transport buses often inflicting the maximum casualties. Now that insurance against third party risk is compulsory and motor insurance is nationalised and transport itself is largely by State Undertakings, the principle of no-fault liability and on-the-spot settlement of claims should become national policy. The victims, as here, are mostly below the poverty line and litigation is compounded misery. Hit-and-run cases are common and the time is ripe for the Court to examine whether no-fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubts. A long ago report of the Central Law Commission confined to hit-and-run cases of auto-accident is gathering dust. The horrendous increase of highway casualties and the chronic neglect of rules of road-safety constrains us to recommend to the Central Law Commission and to Parliament to sensitize this tragic area of tort law and overhaul it humanistically."

9. The learned counsel has also referred to the decision in *New India Assurance Co. v. Punjab Roadways, Ambala City* 964 Pun LR 156 : AIR 1964 Pun 235. It has been held in this judgment that where the delay in making an application for compensation and substitution was partly due to the physical and mental incapacity of the applicant, it is sufficient cause for exercise of discretion vested in the Tribunal to extend time. It is also observed that sufficient cause would receive a liberal construction so as to advance substantial justice where no serious negligence or inaction or want of bona fides is imputed to the claimant.

10. Without considering the impact of Sections 6 and 7 of the Limitation Act. let us examine whether the Tribunal and the learned single Judge are right in dismissing the application for condoning the delay in filing the claim petition, and whether we can go into this question at the stage of a Letters Patent Appeal. To start with, the learned counsel for the appellants has referred to a decision in *Asha Devi v. Dukhi Sao* IR 1974 BC 2048 to show that a Division Bench hearing a L.P.A. under Clause 10 from the judgment of a single Judge in first appeal has the same power which the single Judge has as a first appellate Court, in respect of both questions of fact and of law. The relevant observations in this judgment may be reproduced (at page 2049) :--

"There is no dispute that an appeal lies to a Division Bench of the High Court from the judgment of a single Judge of that Court in appeal from a judgment and decree of a court subject to the superintendence of the High Court. The only question is whether the power of a Division Bench hearing a Letters Patent Appeal under Clause 10 of the Letters Patent of Patna High Court or its analogous provisions in the Letters Patent of other High Courts is limited only to a question of law u/s 100 of the CPC or has it the same power which the single Judge has as a first Appellate Court in respect of both questions of fact and of law. The limitations on the power of the Court imposed by Ss. 100 and 101 of the CPC cannot be made applicable to an appellate Court hearing a Letters Patent appeal from the judgment of a single Judge of that High Court in a first appeal from the judgment and decree of the court subordinate to the High Court for the simple reason that a single Judge of the High Court is not a Court subordinate to the High Court."

11. We shall now examine the evidence produced by the appellants in support of the application for condoning the delay in filing the petition. A.W. 1 is Dr. Kailash Chand Sharma, Medical Officer-in-charge. Civil Hospital, Solan. It is stated by him that he has been in charge of the hospital since November 1967 and that the appellant Asa Singh has been under his treatment from 17-5-1968 and is still continuing to be under his treatment. According to him he was suffering from Chronic Diarrhoea and Anaemia. It is further stated that the wife of Asa Singh appellant has been under his treatment since 18-11-1967 and she was suffering from anaemia, generalised body pains and anxiety neurosis. A.W. 3 is Shri Chuni Lal of Solan. It is stated by him that he is a neighbour of Asa Singh appellant and knows him and his family. It is stated by him that after the news regarding the death of his son was received, Asa Singh went to Rampur and brought his dead body. It is also stated that Asa Singh did not open the shop for two months and that he was mentally up-set (pagal sa rahata tha). According to this witness, the wife of Asa Singh still continues to be in that state and does not come out of her house. It is also stated that Asa Singh very sparingly came out of his house. A.W. 4 is Shri Madan Lal, Cloth Merchant, Solan. It is stated by him that on the death of his son, Asa Singh received a great shock and that previously also he had suffered some reverses in life. The shop of Asa Singh remained closed for about one and a half month after the death of his son. He also used to visit the house of Asa Singh and found him and his wife weeping all the time. It is further stated that his son, Manjeet Singh, used to send him Rs. 300 to 350 per month. According to the witness before the accidental death of his son, there was a theft in his house. A.W. 5 is Asa Singh appellant himself. It is stated by him that his deceased son was drawing a salary of Rs. 500 or 560 per month. Upon the information about the death of his son, he went to Rampur and brought the dead body to Solan. It is stated by him that emotionally all the time he was in such a state that he used to get fits twice or thrice daily and all the time felt giddiness. He has referred to several losses sustained by him. AW 6 is Rulia Ram, Clerk, S.D.O.'s Office, Rampur. He has stated that the deceased Manjeet Singh was

paid a salary of Rs. 470 including D.A. etc. He has proved the accident report Ex. PW6/B. It is stated by him that the police made an enquiry about the cause of death.

12. RW 1 is Shri D. N. Handa, Executive Engineer, Kampur Division, Rampur,

13. From the perusal of the record, it appears that no evidence in rebuttal has been produced by the respondents in this behalf. A perusal of the evidence shows that after the death of his son, Asa Singh appellant was mentally shocked and factually may not be aware about the limitation for filing the claim petition. At the same time, his wife was ill and was under treatment. He was also short of money and financially a wreck. According to his statement even for ceremonies in connection with the death of his son, he had to borrow money. Other witnesses referred to above have also stated about the pitiable condition in which Asa Singh appellant was placed and the mental condition in which he was seen. Looking to all these facts and bearing in mind the fact that the evidence produced on behalf of the appellants in this behalf has not been rebutted, we are of the view that the application for condonation of delay in filing the claim petition deserves to be allowed. Since we have held that the application for condoning the delay is to be allowed, we are not inclined to go into the question whether the appellants were entitled to the benefit of Sections 6 and 7 of the Indian Limitation Act or not.

14. Once the application for condoning the delay to entertain the claim petition is allowed, the question arises whether the appeal itself can be decided on merits or may be remanded for a fresh decision. Looking to the fact that the accident took place as back as in December 1967 and this appeal is being decided after about 14 years, we are inclined to dispose of this appeal on merits as well.

15. A perusal of the evidence on record shows that the parties led evidence not only in respect of the application for condonation of delay, but also on merits. Accordingly, it was not objected to even by the learned counsel for the respondents that the matter be decided on merits. It is, however, contended by the learned counsel for the respondents that there being concurrent finding that no sufficient cause for condonation of delay was proved, this court should not reverse that finding. It is further contended by the learned counsel that sisters and brothers are not entitled to claim compensation as they are not the legal representatives of the deceased. We find no force in these contentions. This court while deciding the Letters Patent Appeal can go into all questions of fact and law in such like matters in the interest of law and justice. Similarly, we are not satisfied that appellants 2 to 5 are not entitled to claim compensation. Assuming that they are not so entitled, the appellant No. 1, Asa Singh, who is the father of the deceased, is still, according to the learned counsel for the respondents, entitled to claim compensation.

16. It is on record that the accident took place on 7-12-1967 at 5 P. M. and a report to that effect was submitted which is Ex. PW 6/A. In the report it is

submitted that the death of Manjeet Singh, regular Overseer in Rampur Division took place in the jeep HIM-2458 which was carrying diesel to work site near Pachhada village on Rampur Gaura road when he was on duty. R.W. 1, Shri D. N. Handa, Executive Engineer, Rampur Division has stated that Shri Manjeet Singh was Sectional Officer under him. It is also stated that the road on which the accident actually took place was being constructed from Rampur to Gaura. It is also, inter alia, stated that the jeep was being used for carrying goods etc. for the construction of road. The labourers work from 9 A. M. to 5 P. M. and duty hours of Sectional Officer are also the same. It is also stated that Manjeet Singh deceased was on duty on the day of the accident. He has also stated that the deceased had boarded the jeep from the store at Rampur. It is further stated that up to 5 P. M. the deceased was on duty, The witness has further stated that the injured driver had been brought on foot by some people to Rampur and that he had no personal knowledge as to when actually the accident took place. The driver of the jeep was stated to be alive, but he has not been produced as a witness to show that the accident did not take place due to his negligence. In the case of State of Punjab v. H. L. Kochhar 980 Acc CJ 437 a Division Bench of this Court in paragraphs 16 and 17 observed as under:--

"The facts as discussed leave no doubt that the maxim *res ipsa loquitur* fully applies in the circumstances of the present case. Since we find that the bus had no latent defect, it should not have gone off the road and rolled down the khad but for the negligence on the part of the driver."

Asquith L. J. in *Barkway v. South Wales Transport Co. Ltd.* (1941) 3 All ER 322 (sic) (1948) 2 All ER 460 ruled :

"If the defendants' omnibus leaves the road and falls down an embankment and this without more is proved, then *res ipsa loquitur* there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption."

It was also observed that to displace this presumption the defendants must show that they used all reasonable care in and about the management of the bus. The Supreme Court in *The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others*, quoted with approval the above mentioned observations of As-quith L. J. and held that the maxim will apply even in case where a tie rod end broke down causing the vehicle to go out of control. Similar view was again taken by the Supreme Court in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*,

In the face of this decision we are inclined to hold that the accident took place due to the negligence on the part of the driver.

17. The only question which now survives for decision is the quantum of compensation to which the appellants are entitled to. The appellants in their claim petition have claimed a total amount of Rs. 50,000 as compensation. There is evidence on record that the deceased was 22 years of age and was gee-ting

total emoluments of Rs. 470 per month including all allowances. According to Asa Singh appellant, the deceased used to send Rs. 300 to 350 per month as his whole family was dependant on him. Even if multiplier method is applied to the instant case, the amount of compensation would come to more than Rupees 50,000. We, however, cannot award compensation in excess of what is claimed in the claim petition. As such, we have no alternative but to award of Rs. 50,000 as compensation to the appellants.

18. For the foregoing reason, the appeal is allowed to the aforesaid extent with costs.