

(1984) 09 AP CK 0016

In the Andhra Pradesh High Court

Case No : C.M.A.S.R. No. 62425 of 1983 and C.M.P.S.R. No's. 62427, 67650 and 79761 of 1983

Babumiyan and Mastan and Another

APPELLANT

Vs

K. Seethayamma and Others

RESPONDENT

Date of Decision : 21-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 110A(3), 110D(1)

Citation : AIR 1985 AP 135

Hon'ble Judges : Punneyya, J;P.A. Choudary, J

Bench : Division Bench

Advocate : Syed Shah Mohd. Quadri, for the Appellant;

Judgement

Punneyya, J.—The respondents herein filed I.A.No.54 of 1983 for condonation of delay in filing O.P.No. 1 of 1983 on the file of the Chairman, Motor Accidents Claims Tribunal, Secunderabad under S.110A(3) of the Motor Vehicles Act r/w Sec. 5 of the Limitation Act. The Tribunal condoned the delay and allowed the I.A.No.54 of 1983 on payment of costs of Rs.100/- to allow each respondent. Aggrieved with the order allowing the interlocutory application the petitioner (respondents 1 and 2) preferred CMASR No. 62425 of 1983 in this Court.

2. The office took an objection that the appeal does not lie and the office asked the counsel for the appellants to convert the CMA into CRP. For taking this objection and for urging the counsel to convert the CMA into revision the office relied upon the decision of a Bench of this Court in CMA No.612 of 1977 dated 3-4-1978.

3. The said CMA was directed against the order of the Motor Accidents Claims Tribunal, Chittoor condoning the delay in filing the claim petition. The claims Tribunal condoned the delay invoking the proviso to sub-sec. (3) of S.110-A which empowers the Claims Tribunal to condone the delay, if it is satisfied that

the applicant was prevented by sufficient cause from making the application in time. But the said CMA was purported to have been filed under Sec. 110-D, sub-sec (1) which provides that any person aggrieved by an award of a Claim tribunal may within 90 days from the date of the award prefer an appeal to the High Court and sub-sec. (2) provides that no appeal shall lie if the amount in dispute is less than Rs.2000/- Before the Bench the learned counsel relied upon a decision of the Madras High Court in G. Gopalaswami Vs. G. Navalgaria and Others, . In this decision, it was held that if a claim petition is preferred after the prescribed period of limitation accompanied by an application for condoning the delay and the said petition for condoning the delay is dismissed with the result that the main O.P. also stands dismissed, it can be treated as an award appealable under S.110D(1). A.V. Krishna Rao, J. extended the same principles to a case where the claimant died pending a claim petition and his legal representatives wanted to come on record to continue the claim petition. Though the Tribunal refused, the learned single Judge held in appeal that such an order amounts to an award and it is appealable on the ground that the interlocutory order has the effect of putting an end to the main petition itself and hence it can also be treated an award. The learned single Judge also held that the same analogy cannot be applied to an interlocutory order which does not put an end to the claim petition and the interlocutory order may be of any nature which means that it may be an order condoning the delay in filing the claim petition or impleading other necessary or proper parties as the case may be. But another Bench in CMA No. 612 of 1977 dated 3-4-1978 did not accept this view of A.V.Krishna Rao, J. The learned Judges held that they find it difficult to say that even such orders amount to an award and can be held to be appealable under Sec.110-D(1). The learned Judges observed that only those orders which have the effect of putting an end to the claim petition or which amount to finally disposing of the original petition can be treated as an award are appealable and no other interlocutory orders. The Bench considered the ruling in G. Gopalaswami Vs. G. Navalgaria and Others, and held that those observations must be understood in proper perspective. In that case, the bench refused to condone the delay and since the refusal had the effect of terminating the claim petition itself, the order should be treated as an award and it is, therefore, appealable. The learned Judges further observed that the order condoning the delay in filing the claim petition will not have the effect of terminating the claim petition and the order does not amount to an award is, therefore, not appealable. So holding, the Bench over ruled the decision of A.V.Krishna Rao, J. In the light of the rulings in G. Gopalaswami Vs. G. Navalgaria and Others, and the decision of the bench in CMANo.612 of 1977 dated 3-4-1978, the legal position may be enunciated as follows: The order refusing to condone the delay in filing the claim petition has the effect of finally disposing of the original petition. Such an order can, therefore, be treated as an award and hence it is appealable. But the order condoning the delay will not have the effect of terminating the claim petition. Hence it cannot be treated as an award and such an order is, therefore, not appealable. It is only a revision that can lie against such an order.

4. In the case on hand, aggrieved with the order of the tribunal condoning the delay in I.A.No.64 of 1983 the present appeal is filed. In the light of the above legal position, the appeal is not maintainable. Hence the objection raised by the office is proper and sustainable under law. The objection is, therefore, upheld. The party is directed to convert the appeal into a revision.

5. Order accordingly.