

(2009) 10 CHH CK 0017
In the Chhattisgarh High Court
Case No : M.A. No. 220 of 2004

Brijlal Yadav and Another

APPELLANT

Vs

Horilal Sahu and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Chhattisgarh Motor Vehicles Rules, 1994 — Rule 220, 220(3), 221, 222, 223
Motor Vehicles Act, 1988 — Section 107, 111, 138, 159, 165
Penal Code, 1860 (IPC) — Section 304A

Citation : (2009) 4 MPJR 145

Hon'ble Judges : Rajeev Gupta, C.J.; T.P. Sharma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

T.P. Sharma, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") is directed against order dated 20-11-2003 passed by the 2nd Additional Motor Accidents Claims Tribunal, Durg (for short "the Tribunal") in Motor Accident Claim Case No. 110/2000, whereby the Tribunal has dismissed the application for compensation filed u/s 166 of the Act on the ground that the appellants have not filed the death certificate of the deceased who died in the motor accident.

2. Order impugned is challenged on the ground that the claim of the appellants cannot be frustrated, on the technical ground of non-filing of death certificate. Autopsy report containing death and cause of death of the deceased, filed by the appellants was sufficient and substantial compliance of Rule 220(3) (i) of the Chhattisgarh Motor Vehicles Rules, 1994 (for short "the Rules").

3. Brief facts of the case giving rise to this appeal are that deceased Jhanna Bai, daughter of the appellants, died on account of motor accident on 11-10-2000. The Pulgaon Police have registered the crime for the offence punishable u/s 304A of the I.P.C. against respondent No. 1, driver of the offending tractor No. MP-23/GA-8976. Application for compensation u/s 166 of the Act was filed by the

appellants on 17-10-2000. Notices were issued to the opposite parties, issues were framed on 23-7-2001, and the case was posted for evidence several times. On 26-9-2003, the Tribunal directed the appellants to file death certificate of deceased Jhanna Bai and the case was adjourned for 13-11-2003. Finally on 20-11-2003, application for compensation was dismissed on the ground of non-filing of death certificate on behalf of the appellants..

4. We have heard Mr. N.K. Chatterjee, learned counsel for the appellants, Mr. Sudhir Agrawal & Mr. P. Dutta, learned counsel for respondent No.3 and perused the order impugned and record of the Tribunal.

5. Mr. N.K. Chatterjee, learned counsel for the appellants, vehemently argued that the provisions of the Act relating to award of compensation on account of motor accident is a social welfare legislation enacted to provide relief by way of award in a short span of time. The Act and the rules made thereunder are complete procedure for adjudication of the application for compensation and the Tribunals are required to follow the summary procedure in accordance with Section 169 of the Act. Clause (i) of sub-rule (3) of Rule 220 of the Rules provide for filing of death certificate in case of death in a motor accident, but no format has been prescribed for the death certificate. The appellants have filed autopsy report of deceased Jhanna Bai containing death and cause of death of the deceased which is sufficient compliance of clause (i) of sub-rule (3) of Rule 220 of the Rules. The Tribunal was under obligation to pass award on merits instead of dismissing the application for compensation on technicalities, but the Tribunal has failed to discharge the statutory function by dismissing the application for compensation.

6. On the other hand, Mr. Sudhir Agrawal & Mr. P. Dutta, learned counsel for respondent No.3, opposed the appeal and submitted that the Tribunal has rightly dismissed the claim of the appellants in absence of death certificate as required under Rule 220 (3)(i) of the Rule.

7. The Chhattisgarh Motor Vehicles Rules, 1994 have been framed in exercise of powers conferred by Sections 28,38,65,95,96,107, 111, 138,159, 176, 211 & 213 of the Act. Chapter IX of the Rules in which Rule 220 is there deals with the provisions of the Claims Tribunal. Rule 220 of the Rules reads as under:

220. Application for compensation arising out of an accident - (1) An application for compensation arising out of an accident of the nature specified under the act shall be in form M.P.M.V.R.-75 (COMP-A).

(2) Every such application shall be sent to the Claims Tribunal by registered post or may be presented to such Claims Tribunal and shall, unless the Claims Tribunal otherwise directs be made in duplicate and shall be signed by the applicant.

(3) There shall be appended to every such application, the following documents, namely:

- (i) Injury certificate in form MPMVR-76 (COMP-B) or in case of death certificate
 - (ii) first information report in respect of the accident; and
 - (iii) certificate regarding ownership and insurance particulars of the vehicle involved in the accident obtained from Registering Authority or Accident Information Report in Form 54 of the Central rules obtained from the Registering Authority or the Police.
- (4) If any of the documents specified in clause (c) of sub-rule (3) are not appended to the application the reasons for not appending them shall be stated, and if the tribunal is satisfied, it may proceed with the application and require production of such document at a later stage.

8. The source of framing of Rules 220 to 242 of the Rules which fall in Chapter IX of the Rules is attributed to Section 176 of the Act. Section 176 of the Act, which falls in Chapter XII of the Act deals with the constitution and various other provisions regarding Claims Tribunals. Section 176 of the Act reads as follows:

176. Power of State Government to make rules - A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular such rules may provide for all or any of the following matters, namely:

- (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
- (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
- (e) any other matter which is to be, or may be, prescribed.

This clearly indicates that these Rules have been framed for the purpose of carrying into effect of the provisions regarding filing of the claim petition before a duly constituted Tribunal, its manner of filing and hearing of such petitions and thereafter passing of appropriate awards by such Tribunals.

9. The Tribunals are under obligation to award just and reasonable compensation to the genuine claimants after determining the factum of accident as also the factum of rash and negligent act on the part of driver of the offending vehicle. Therefore, while interpreting the provisions of the Act or the rules framed thereunder, primary object and the reasons to bring the legislation cannot be overlooked and the use of specific words by the Legislature at different places in the legislation has to be given a meaning which shall achieve the object and reasons of the legislation. Sub-rule (3) of Rule 220 of the Rules uses the word

"shall" and provides that certain documents shall be appended to every application filed for compensation arising out of the accident therefore, what meaning should be given to this word "shall" in sub-rule (3) has to be considered.

10. While dealing with the question of usage of word "shall" in sub-rule (3) of Rule 220 of the Rules, after placing reliance in the matters of State of U.P. Vs. Manbodhan Lal Srivastava, , The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, , Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, , Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, , Shriram and Others Vs. The State of Bombay, , Khub Chand and Others Vs. State of Rajasthan and Others, , Haridwar Singh Vs. Bagun Sumbrui and Others, & In re. Presidential Election 1974 AIR 1974 SC 1682, this Court in M.A. No.278/2001 (Sukhdev Sai v. Executive Engineer Public Works Department & others) vide its order dated 7-4-2008 has held that use of the word "shall" does not make sub-rule (3) of Rule 220 of the Rules mandatory and the said sub-rule is directory, non-compliance of the same has not an automatic consequence of leading to the dismissal of the claim petition. Para 18 of the order passed in M.A.No. 278/2001 reads as follows-

For the foregoing discussions, it is apparent that if strict interpretation is given to the word "shall" used in sub-rule (3) of Rule 220 of the Rules and the provisions are held mandatory it shall defeat the very purpose of this procedural legislation and also the main legislation on the subject. Therefore, we hold that the provisions of sub-rule (3) of Rule 220 of the Rules are not mandatory and they are directory and the non-compliance of sub-rule (3) of Rule 220 has not an automatic consequence of leading to the dismissal of the claim petition.

11. Rule 220 (3) (i) of the Rules provides that in case of injury, certificate in form MPMVR-76 (COMP-B) shall be appended with the application for compensation and in case of death, the death certificate. The Legislature has provided form for injury certificate but has not provided form/proforma for death certificate. Filing of autopsy report containing death and its cause would be sufficient to constitute the document of death certificate. Even otherwise, non-compliance or violation of sub-rule (3) of Rule 220 of the Rules does, not lead to the consequence of dismissal of the application for compensation. The Tribunal has not considered the very aspect of the Legislation and nature of the provisions of clause (i) of sub-rule (3) of Rule 220 of the Rules and thereby committed illegality by dismissing the application for compensation.

12. For the foregoing reasons, the order impugned is not sustainable under the law and it is liable to be set aside. Accordingly, the appeal is allowed and the order impugned dated 20-11-2003 passed by the 2nd Additional Motor Accidents Claims Tribunal, Durg in Motor Accident Claim Case No.110/2000 is hereby set aside. The matter is remitted back to the Tribunal for disposal in accordance with law. Record of the Tribunal be sent back forthwith. Parties present here are directed to appear before the Tribunal on 3.12.2009.

13. No order as to costs.