

(2010) 09 KAR CK 0045
In the Karnataka High Court
Case No : MFA. No. 4799 of 2005

Chandramma, Deepika and Shivakumar	APPELLANT
Vs	
Rafeeq Ahmed Sab, Krishna and The United Insurance Co. Ltd.	RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 173 (1)

Citation : (2011) ACJ 2453

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Karumbaiah, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—This appeal is u/s 173(1) of Motor Vehicles Act, 1988, by claimants before the Additional MAC Tribunal. Mysore in MVC. No. 137/2004. The claim was due to the death of the bread winner - the husband of the 1st claimant - Appellant and father of claimant Nos. 2 and 3, who are minor daughter and minor son respectively of the deceased person.

2. Claim was for the reason that the person by name Puttaraju, had died in an accident that occurred on 15.03.2004 at about 10.30 p.m. involving two Motor Vehicles, when he was riding a Bajaj Chetak Scooter bearing registration No. CAT - 4235, which was dashed against by a goods tempo bearing registration No. KA-21 1708 coming from the opposite direction at Hunasavadi, near Periyapatna, Kushalnagar Road driven by the 1st Respondent and as a result of the injuries the person had succumbed, to the same later at.

3. The claim was for seeking compensation in a sum of Rs. 8,20,000/- and as against this amount of compensation with the matter being contested by the Respondents - the owner, driver and the Insurance Company of the tempo respectively, the Tribunal quantified the total compensation due to the claimants at Rs. 1,83,000/- as computed under:

Loss of Dependency

= Rs. 1,60,000-00

Loss of Expectancy

= 10,000-00

Loss of

= 10,000-00

Funeral expenses

= 3,000-00

Rs. 1,83,000-00

4. It is complaining that the compensation awarded by Tribunal is inadequate, the present appeal by the claimants.

5. The appeal papers were presented by the learned Counsel for the Appellants on 2nd June 2005, but with many defects. The High Court registry on noticing such defects in the presentation of the appeal, notified the same on the notice board of the registry for compliance on 15.06.2005. The appeal memorandum was required to be set right and made presentable within six weeks thereafter, and today it is submitted before us by Sri Karumbaiah, learned Counsel for the Appellants that some of the office objections had been complied with on 12.07.2005.

6. However, it appears the registry noticed that, not all defects had been removed and in spite of it, listed the matter before the Court on 9.08.2005. The order sheet reflects the following order on the said date: -

SRNJ/CRKSJ: 09.08.2005

Finally two weeks time is granted to comply with the office objections, failing which the appeal shall stand dismissed for non-prosecution without any further orders from the Court.

7. As it appears that the counsel for the Appellants had not removed the defects and had not made the appeal presentable within two weeks time, granted by this Court as per order passed on 09.08.2005, registry has treated the appeal as dismissed on 09.08.2005 in lieu of peremptory order passed by this Court on 9.08.2005. In such circumstances, the appeal has been treated to be dismissed due to non-compliance of office objections and for failing to remove the defects in the presentation as had been noticed by the Registry. The registry has recorded that the appeal was not tenable and was not required by law.

8. It is under such circumstances, the Misc. Cvl. No. 10784/2010 is now filed u/s 151 of CPC for re-calling the order dated 09.08.2005 and Misc. Cvl. 10782/2010 is filed u/s 5 of the Limitation Act for condoning the delay of 1768 days in filing

the application for re-calling the order.

9. Both the applications are accompanied by affidavit sworn to by Sri Karumbaiah, learned Counsel for the Appellants. Sri Karumbaiah appearing before us, submits that the counsel was oblivious of the developments leading to the dismissal of the appeal and was not aware that the appeal had come to be dismissed by a peremptory order passed by this Court and became aware of the dismissal of the appeal only on 10.07.2010, when it became necessary for the counsel to verify his office records in the wake of certain developments and he having received the information that the 3rd Appellant - a minor son of the deceased was no more, as in a most strange and gruesome murder the neighbour had stabbed him to death; that the counsel has taken steps to file the applications and in such circumstances seeks recalling of the peremptory order dismissing the appeal for non-compliance with office objections or not making the appeal presentable, and prays that the appeal be restored to file to examine on merits of the matter and more so in the interest of justice as otherwise Appellants interest will greatly suffer.

10. While, we definitely agree with the learned Counsel that the interest of claimants-Appellants will suffer unless the order is recalled and the appeal examined on merits, particularly, as we find that the quantum of compensation as determined by the Tribunal on the face of it is inadequate, with the Tribunal having attributed a notional income of Rs. 15,000/- p.a. to the deceased person, though the deceased was a owner of a two wheeler and the 1st Appellant-claimant states on oath that the deceased was carrying on business in ginger crop.

11. Be that as it may, we prima facie find there is a possibility of claimants receiving a proper compensation due to the death of the breadwinner of the family only if the appeal is examined on merits, but the appeal having been dismissed five years ago, in the present situation as indicated above, we cannot help noticing two aspects in this sorry state of affairs.

12. Firstly the most undesirable practice of this Court passing peremptory orders indicating that if certain conditions are not fulfilled or not met within a stipulated period than the appeal stands dismissed automatically.

13. Judicial proceedings are not some vague, arbitrary or whimsical proceedings, but are required to be conducted in a proper¹ manner and by adhering to legal procedure, and not based on individual perceptions of just or unjust or right or wrong and definitely should not be on the notions or whims or fancies of individual Judges, who preside over the Bench. Consistency in Judicial proceedings is the hallmark of court orders and what distinguishes judicial proceedings from administrative functioning. Secondly, even in a situation where Court passes a peremptory order directing that the appeal should stand dismissed automatically if the requirement as conditioned in the order is not met, even after the expiry of the period within which date it should have been

complied, then also the appeal does not get dismissed automatically by a mere note or a recording to this effect made by the registry of the High Court, but the appeal should inevitably be listed before the Bench of the court before the very bench passing the earlier order or the bench having roster for the purpose of dismissal of the appeal for non-compliance.

14. Where the requirement of making the appeal presentable or any other requirement which should have been met, but is not met with is the situation, then the appeal should be listed for dismissal before the Court, indicating the reason for such listing. It is thereafter, the Court can look into and pass appropriate orders for the dismissal or otherwise of the appeal, if it is so warranted and justified in the facts and circumstances. Following this procedure is a must for the Registry.

15. This course of action will also avoid a possible controversy of the learned Counsel for the Appellant later coming up with the version that the counsel had actually set right the defects within the time permitted by the Court, but the registry has not taken note of such corrective measures taken by the counsel and has nevertheless dismissed the appeal.

16. The listing also enables the learned Counsel for the Appellant not only to make a submission about the development up to that day, but also gives another opportunity to the counsel to become aware of the development, if the counsel is ignorant up to that day of the development of the peremptory order having been passed by the Court.

17. This will also be in compliance with meeting the requirement of following the principles of natural justice, as, if the counsel for the Appellant was not present before the Court, for any reason on the earlier date, that counsel will not be aware of the peremptory order for dismissing the appeal itself after expiry of the period, if the defects are not removed by then.

18. Overall, power to dismiss the appeal is only with the Court and it is only the Judges of this Court who can pass orders to dismiss an appeal and not by a noting or record, made on the order sheet by the registry.

19. In the present case, we notice that even if the appeal could have been possibly dismissed, it should have been only after the expiry of two weeks from 09.08.2005 in terms of the peremptory order, but the registry on the other hand has prepared the record to show that the appeal stood dismissed on 9.08.2005 as per the peremptory order.

20. Registrar Judicial of this Court to take note of these observations and directions and to henceforth direct the registry of High Court to strictly comply with the procedure as indicated in this order, whenever peremptory orders, however, undesirable, they may be, but nevertheless are passed by this Court.

21. Sri. Seetharama Rao, learned Counsel, who regularly appears for Insurance Companies in accident claim cases, has acted as Amicus Curiae to enlighten us

regarding the decision of Supreme Court of India in the case of Bihar State Electricity Board and Others Vs. Bhowra Kankanee Collieries Ltd. and Another, and Mahanth Ram Das Vs. Ganga Das, wherein it has been observed that the Courts should avoid passing peremptory orders and has frowned upon this practice.

22. We find that such obnoxious practices have developed in judicial parlance, and that should be discontinued at least henceforth. It is for this reason that we have bestowed some attention to the developments leading to the present situation.

23. In this very case, we notice that an order passed by this Court if it is to be literally construed, the appeal will come to be dismissed only after the expiry of two weeks, which the Court itself has granted, but the registry has proceeded under the impression that the appeal came to be dismissed on 09.08.2005 itself.

24. That apart if an appeal has to be dismissed, particularly, which is a statutory right given to a litigant, it should be by an express order passed by the Court and by the Judges presiding, and in the Court hall and not in any other place or in any other manner but definitely not in the registry of the High Court! The Court is made functional through the Judges and not through the registry, which is taken care of by the ministerial staff of the High Court. Registry has no power to dismiss the appeal. The two obnoxious practices which disturbs us is that a poor litigant who may be ignorant is literally left languishing as we find in the present case, the Appellants are the kith and kin of the deceased who has lost his life in an accident involving a motor vehicle while being used on the road and the object of the statutory provisions was to ensure that such victims of road accidents are provided with quick inexpensive relief, before an informal tribunal like the Motor Accident Claims Tribunal, which has been created, for achieving such an object.

25. Appellants have lost their bread winner and his support and are complaining of the inadequacy of the compensation as determined by the tribunal and are seeking for enhancement, but that has not happened for the last five years after the presentation of the appeal before this Court. In fact the appeal is still not presented in a proper manner before this Court and it is not even an appeal in the eye of law.

26. This position inevitably reflects very poorly on the sorry state of affairs and the deplorable conditions that prevail in the legal profession.

27. Though we feel sorry to lament about such pathetic conditions, time and again, we do not find much corrective measures being taken in this regard by the concerned professional body or even by the legislature nor learned members of the Bar pulling up their socks, to become competent professionals and to conduct the cases of their clients in an efficient manner.

28. This negligent attitude, exposes them into the risk of paying or compensating

the possible loss to the litigant and definitely an action will lie in law, against such careless lawyers.

29. In the instant case, the Tribunal having passed the order on 28.02.2005, though there is not much delay in the actual presenting of the appeal papers, but due to the lapses on the part of the learned Counsel for the Appellant, it is as though an appeal is presented only after five years after the order is passed by the Tribunal and in such circumstances, the owner who is liable to compensate the claimant and the Insurance company which has to indemnify the owner may definitely take up the defence, of delay in the presentation of the appeal and contend that it should be absolved from the liability to pay interest, on the possible enhancement that it may have to pay and due to the delay and to that extent, it is definitely a loss to the litigant.

30. In the instant case, we notice that even as indicated in the memorandum of appeal as prepared by the learned Counsel for the Appellants, the Appellants are entitled to claim compensation in a sum of Rs. 6,37,000/- over and above the amount awarded by the tribunal. Even if an amount of this magnitude is not, likely to be payable on the part of the owner, on the such lesser enhancement, required to be allowed in this appeal and on such amount, the owner and the insurer have to make good this amount with interest from the date of the presentation of the claim petition before the Tribunal upto the date of payment.

31. Then the question will be as to who should be made liable to pay compensate this quantum, to the Appellants-claimants before this Court, if the interest part of the amount is not met by the owner and the insurer.

32. It may be possible that the claimants may not be able to get the entire amount by way of enhancement. In the circumstances, particularly in the wake of the submission made by Sri. Karumbaiah, learned Counsel for the Appellant that the counsel is prepared to meet the costs etc., and as the Respondents are not yet notified, we deem it proper to direct the counsel for the Appellants to pay the interest part on the possible enhanced amount of compensation that may become payable in this appeal and we leave it to the wisdom and judgment of the counsel to quantify this amount and at least to show his bona fides to prosecute the appeal on behalf of the Appellants, to deposit that much of interest, which otherwise will be due to the claimants in the interregnum and this amount is required to be paid to the Appellants irrespective of the result of the appeal.

33. We grant two weeks time to the counsel to deposit the amount, which amount learned Counsel himself has to deposit in the wake of developments as we have noticed above.

34. We also notice that it is high time that the Bar Council ensures and maintains professional ethics and responsibilities on the part of the members of the Bar, periodically check their performance levels and adopts commensurate measures to maintain discipline, in the interest of poor litigants and to ensure that the

litigants are not taken for a ride.

35. We therefore, direct Registrar General of this Courts to forward a copy of this order to the Secretary, Karnataka Bar Council, Secretary, Bar Council of India and to the Secretary, Ministry of Law, Parliamentary Affairs, State Government and also the Central Government as also the State Law Commission and the Central Law Commission.

36. Registry to issue a free copy of this order to Sri Karumbaiah, learned Counsel for the Appellants.

37. After the deposit being made by Sri. Karumbaiah, counsel for the Appellants and on the counsel showing his bona fides, we shall consider the applications for orders.

38. List for further order on 16.09.2010.