

(2000) 03 AHC CK 0005
In the Allahabad High Court
Case No : F.A.F.O. No. 632 of 1983

Daya Shanker Pandey and Another

APPELLANT

Vs

U.P. State Road Transport Corporation

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

General Clauses Act, 1897 — Section 6
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140, 163A, 166, 217, 53

Citation : (2001) ACJ 1869

Hon'ble Judges : U.S. Tripathi, J;O.P. Garg, J

Bench : Division Bench

Judgement

U.S. Tripathi, J.—The claimants have preferred this first appeal from the order against judgment/award dated 28.2.1983 passed by the Motor Accidents Claims Tribunal/2nd Additional District Judge, Basti in Claim Petition No. 12 of 1982 dismissing the claim petition.

2. The appellants and their mother Bharat Devi filed claim petition before the Motor Accidents Claims Tribunal, Basti for award of compensation amounting to Rs. 1,13,900 (Rupees one lakh thirteen thousand nine hundred only) on account of death of Ram Asrey in a motor accident. The case set up by the appellants in the above claim petition, briefly narrated, was that Ram Asrey, father of appellants aged about 45 years was serving as seasonal peon in Tahsil Basti and was getting Rs. 250 per month as salary. Besides it, he was also earning Rs. 100 from his agriculture. On the evening of 25.4.1977 he was coming on his cycle from Tahsil Basti to his village Dasiya along with Laxmi Shanker Pandey and Shyam Karan. At about 6.30 p.m. when he reached near the village Padiya Pokhara on Basti-Bansi Road, bus No. USB 9705 owned by respondent came from Bansi side and due to rash and negligent driving by the driver of said bus it dashed against cycle of Ram Asrey due to which he fell down and sustained injuries. He was shifted to District Hospital, Basti, where he was admitted and ultimately died on 26.4.77 at about 1 a.m. due to above injuries. The claimants/

appellants, however, filed claim petition on 27.11.1981 along with an application u/s 5, Limitation Act for condonation of delay contending that a criminal case regarding accident was pending against the driver and the mother of appellants was advised to file petition after decision of criminal case and that the claimants-appellants were minor and one of the appellants attained majority only on 5.4.81.

3. The petition was contested by the respondent on the ground that on 25.4.1977 the bus No. USB 9705 was coming to Basti from Soharatgarh with normal speed and was being driven carefully. When it reached near Padiay Pokhara, the deceased who was coming from the side of Basti on the cycle, suddenly moved his cycle towards right side and came in front of speeding bus. The rear portion of his cycle was dashed against the speeding bus and consequently, he fell down and sustained minor injuries. The driver of the bus took him in the bus and admitted in the hospital. He also lodged report of the occurrence. The accident had not taken place due to rash and negligent driving of the driver, but due to own negligence of the deceased and the claimants were not entitled to any compensation. It also contended that amount of compensation claimed was exorbitant and excessive.

4. On the above pleadings of the parties, the Tribunal framed necessary issues and on considering the evidence of the parties held that though the accident took place on 25.4.1977 and the petition was filed on 27.11.81, but the proviso to Sub-section (3) of Section 110-A of the Motor Vehicles Act, 1939 authorised the Tribunal to entertain the claim petition after a period of six months, if it is proved that the applicant was prevented by sufficient cause from making the application in time. The grounds for condonation set up by the claimants were sufficient and delay was liable to be condoned. The Tribunal, accordingly, condoned the delay and held that the petition was not barred by limitation. It further held that the accident occurred due to contributory negligence of the deceased and not due to rash and negligent driving of the bus by its driver. Again it held that on account of the death of the deceased, the claimants were entitled to Rs. 18,400 as compensation. With these findings, the Tribunal dismissed the claim petition.

5. Aggrieved with the above judgment/award, the claimants preferred this appeal.

6. We have heard Mr. H.P. Mishra, learned counsel for the appellants as well as the learned counsel for the respondent and have perused the record.

7. The claim petition was preferred beyond a period of four years one month and three days of limitation, which was in force at the time of filing of the petition along with the application of condonation of delay. The Tribunal has condoned the delay in preferring the petition beyond time and held that the petition was not barred by time. However, the respondent has not filed any cross-objection. But in view of the fact that the limitation clause as provided in Sub-section (3) of Section 166, Motor Vehicles Act, 1988 having been deleted w.e.f. 14.11.1994 and in view of the Supreme Court decision in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, here appears no question of limitation for filing the

claim petition.

8. Section 110-A (3) of Motor Vehicles Act provided limitation of six months for filing a claim petition. The proviso to said Sub-section provided as below:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

9. The Motor Vehicles Act, 1939, was repealed by Motor Vehicles Act, 1988 and Section 166(3) of the said Act also provided six months limitation for filing claim petition. However, the proviso to said Sub-section (3) of Section 166 vested power in Tribunal to entertain such application after expiry of six months but not later than twelve months, if it is satisfied that the claimant was prevented by sufficient cause from making an application in time. However the above Sub-section was deleted by Section 53 of Motor Vehicles (Amendment) Act, 1994, which came into force w.e.f. 14.11.1994. The effect of deletion of Section 166(3) of the Motor Vehicles Act, 1988, was considered by the Hon"ble Supreme Court in the above noted case of Dhannalal v. D.P. Vijayvargiya 1996 ACJ 1013 (SC) and held that the deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of Sub-section by Parliament is not defeated. If a victim of the accident or heirs of deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Apex Court, the appellant has been pursuing from Tribunal to this court (Supreme Court). His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994, in respect of the accident, which took place on 4.12.1990, in view of the Amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this court cannot be thrown out on the ground of limitation.

10. In this way, the question of limitation does not arise in this case, as the appeal was being pursued on the date of deletion of Sub-section (3) of Section 166, Motor Vehicles Act, 1988.

11. The next contention of the learned counsel for the appellants was that even though it is not proved that the death of deceased took place due to rash and negligent act of the driver of the bus in question, the claimants were entitled to the benefit of no fault liability payable by the insurance company provided u/s 92-A of Motor Vehicles Act, 1939 and Section 140 of Motor Vehicles Act, 1988. He further contended that the appeal was pending on the date of enforcement of Section 140 of Motor Vehicles Act, 1988 by Amendment Act, 1994 w.e.f. 14.11.1994 and, therefore, the claimants are entitled to no fault liability

compensation as provided under the said Section 140 of the Motor Vehicles Act, 1988. In support of his above contention, he placed reliance on single Judge case of this court Kamta Prasad v. Jaggan and Co. 1996 ACJ 57 (Allahabad).

12. The question, therefore, which remains to be decided in this appeal is as to whether Section 92-A of the old Act and Section 140 of the new Act is applicable on the fact of the case and whether the fixed minimum liability to pay compensation as provided in either of two of these sections binds the respondent.

13. In Kamta Prasad and Another Vs. Jaggan and Co. and Another, , it was held that Section 92-A of Motor Vehicles Act, 1939 (old Act) was intended to have a retrospective effect and all claims either pending before Tribunal or courts or otherwise subsisting on the date of enforcement of the sections are covered and so also is the effect of Section 140 of the Motor Vehicles Act, 1988 (new Act). Similar will be the position in respect of Section 163A inserted by Amendment Act, 54 of 1994 in the Motor Vehicles Act, 1988 with effect from 14.11.1994. There is nothing in Section 217 of the said Act to suggest exclusion of Section 140 to pending cases. The limit of compensation in the case of death has since been enhanced to Rs. 50,000 by means of Amending Act No. 54 of 1994 which has been enforced with effect from 14.11.1994.

14. The above case was also considered in subsequent Division Bench case of this court in Navin Chandra Pandey v. Jaspal Singh 2001 ACJ 272 (Allahabad). The Division Bench in the said case held that it may be mentioned here that in so far as the provision contained in Section 6 of the General Clauses Act is concerned, it is attracted to only repealing enactment. While it is true that by the new Act which was enforced with effect from 1.7.1989, the old Act stood repealed, the controversy may, therefore, arise as to whether Section 140 of the new Act will apply to the facts of the case or not. In the said case, the Tribunal judgment was dated 19.10.1983, the appeal was consequently filed by the appellant in this court on 26.2.1984. Held that the appellant filed the appeal under the old Act and the Tribunal decided the claim petition under the old Act. It is only the time consumed in this court for deciding the appeal that has permitted the counsel to try to invoke Section 140 of the new Act also.. No party can suffer for the fault of the court. While it was the duty of this court to decide the appeal as expeditiously as possible in accordance with law, its delayed decision cannot empower the contending parties to rely upon the provisions of the new Act in order to inflate the less compensation amount which may be available to it as the amended provisions under the old Act are attracted to the facts of the case. Regarding the applicability of Section 92-A of the old Act which came into force w.e.f. 1.10.1982 it was held that the provisions were in existence much prior to the date of the judgment of the Tribunal in the instant case, which was dated 19.10.1983. Chapter VII-A of the old Act of which Section 92-A was part shall have effect notwithstanding anything contained in any other provision of the old Act or of any other law for the time being in force, as contained in Section 92-E of the said Act. This overriding effect puts an end to the argument

advanced. The Tribunal was bound to arm itself with these provisions contained in Chapter VII-A. It has overriding effect on any other law for the time being in force as also on any other provision of the old Act. Regarding Kamta Prasad's case 1996 ACJ 57 (Allahabad), it was held that the learned single Judge upheld the applicability of Section 92-A of the old Act and did not bring in Section 140 of the new Act for granting relief to the appellant in that case. Further held that the provisions of Section 92-A of the old Act as also amended provision contained in Section 95 of the old Act were applicable and the appellant was entitled to claim compensation of Rs. 15,000.

15. In the instant case, the accident took place on 25.4.1977. Claim petition was filed on 27.11.1981. The Tribunal delivered its judgment on 28.2.83 and the appeal to this court was filed on 11.7.83. Thus, the provisions of Section 92-A of old Act were applicable on the date of judgment by the Tribunal as well as on the date of filing of appeal in this court. In view of the above Division Bench case of this court in Navin Chandra Pandey Vs. Jaspal Singh and Others, , we are of the view that the claimants are entitled to minimum no fault liability compensation of Rs. 15,000 as provided u/s 92-A of the old Act existing on the date of decision by the Tribunal and the presentation of the appeal. Since, the applicability of Section 140 of the Motor Vehicles Act, 1988 as amended by Act No. 54 of 1994 w.e.f. 14.11.94 was negatived by the Division Bench case, the minimum no fault liability compensation provided u/s 140 of new Act is not applicable to the facts of the present case.

16. Therefore, we are of the view that the appellants were entitled to Rs. 15,000 (Rs. fifteen thousand only) as compensation. We, accordingly, allow the appeal in part and hold that claimants are entitled to recover Rs. 15,000 (Rs. fifteen thousand) from the respondent along with interest at the rate of 12 per cent per annum from the date of presentation of the petition, i.e., 27.11.1981.