

(1971) 07 AHC CK 0018

In the Allahabad High Court

Case No : F.A.F.O. No's. 142 and 143 of 1970 and Civil Revision No's. 692 and 693 of 1968

Devendra Kumar Gupta

APPELLANT

Vs

The Pilokhri Brick Kiln

RESPONDENT

Date of Decision : 06-07-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A(3), 110F

Citation : (1971) ACJ 352 : AIR 1972 All 61 : (1971) 41 AWR 602

Hon'ble Judges : Satish Chandra, J;K.N. Srivastava, J

Bench : Division Bench

Advocate : B. Dikshit, for the Appellant; K.P. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—These appeals and revisions raise common questions and can be disposed of together.

2. A truck bearing number USL 8010 belonging to the defendants-respondents was involved in an accident on 9th June, 1966. Arun Gupta and Rajvardhan Gupta, sons of Devendra Kumar, received injuries at the accident. Later, Arun Gupta died. His father Devendra Kumar, on 24th May, 1967, instituted a suit in the Court of the Civil Judge Meerut, for recovery of compensation from the defendants-respondents for damages suffered by him as a result of his son Arun Gupta's death. The same day, Rajvardhan Gupta filed another suit in the same Court for compensation for the injuries sustained by him. Both the suits were accompanied by applications for leave to sue in forma pauperis. Both cases were heard together, and disposed of by the learned Civil Judge, Meerut, by a common judgment.

3. It appears that by a notification dated 22nd April, 1967, the State Government constituted a Motor Accidents Claims Tribunal for the district of Meerut u/s 110, Motor Vehicles Act, 1939. Section 110-F, Motor Vehicles Act, debarred the Civil

Courts from entertaining any claim for compensation which may be adjudicated upon by the Claims Tribunal. The defendants raised a preliminary objection that the suits as well as the applications for permission to sue in forma pauperis were not maintainable because the Civil Courts were debarred from entertaining claims for compensation instituted after the establishment of the Claims Tribunal. The learned Civil Judge, Meerut, upheld this objection and rejected the applications and the suits. The two revisions are directed against these orders.

4. Thereafter, on 12th February, 1958, the two plaintiffs filed applications for compensation before the Claims Tribunal. The defendants-respondents contested the applications. They pleaded that since the accident took place prior to the constitution of the Tribunal, the Tribunal had no jurisdiction to entertain the claim for compensation. In support, reliance was placed upon a single Judge decision of this Court in *The New India Assurance Co. Ltd. and Others Vs. Smt. Shanti Misra and Others*, . In this case it was held that the Civil Court, and not the Claims Tribunal, had jurisdiction to entertain claims for compensation in respect of accidents which occurred prior to the constitution of the Claims Tribunal. In view of this decision, the Tribunal upheld the preliminary objection, and dismissed the claim petitions. The two appeals are directed against orders dismissing the two claim petitions.

5. The anomalous position created by these two sets of decisions is that a person entitled to compensation, cannot enforce his right either in the Civil Court or before the Claims Tribunal, at any time after the constitution of the Claims Tribunal, if the accident had taken place before the establishment of the Tribunal.

6. Previously, under the Fatal Accidents Act, 1855, a suit for compensation for an accident arising out of the use of motor vehicles could be instituted in the Civil Court, within one year from the date of the death (Article 21, Limitation Act, 1908). Section 110, Motor Vehicles Act, 1939, authorised the State Governments to appoint a person or a body of persons to investigate and report on accidents, involving the death of or bodily injury to any person, arising out of the use of motor vehicles and the extent to which their claims to compensation had been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation. But, the persons appointed were not empowered to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded, except on the express desire of the concerned Insurance Company. It was felt that Section 110 had not helped persons of limited means in preferring claims, because a court decree had to be obtained before the application of the Insurance company to make claims could be enforced. Parliament sought to remedy this position by providing a quick and a cheap remedy by the Motor Vehicles (Amendment) Act, 1956. It added a new Section 110 and Sections 110-A to 110-F to the Motor Vehicles Act, 1939. Section 110 authorised the State Government to constitute Motor Accidents Claims Tribunals for a particular area for adjudicating upon claims for compensation. Under Sub-section (3) of Section 110, only a person who has

been a District Judge or a Judge of a High Court is qualified to be appointed as a member of the Claims Tribunal. Sub-section (1) of Section 110-A, enacts that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made by the persons mentioned in it. Under Sub-section (2) of Section 110-A, the application is to be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Sub-section (3) prescribes a period of limitation for making such applications. The proviso thereto authorises the Tribunal to condone the delay if sufficient cause is shown for it.

7. u/s 110-B, the Tribunal makes an award of compensation in accordance with the procedure and powers prescribed by Section 110-C. Section 110-D provides for an appeal to the High Court against the award, provided the amount in dispute is not less than Rs. 2,000/-. Section 110-E provides for recovery of the amount awarded as an arrear of land revenue. Section 110-F bars the jurisdiction of the Civil Court. It provides:--

"110-F. Bar of jurisdictions of Civil Courts:--

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claims for compensation shall be granted by the Civil Court."

This provision creates a bar to the jurisdiction of the Civil Court on the fulfilment of two conditions. In the first place, the bar arises after the constitution of a Claims Tribunal, Next the Civil Court is barred from entertaining "any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area." If any question relating to a claim for compensation is such as may not be adjudicated upon by the Claims Tribunal, the Civil Court's jurisdiction to entertain such question is not barred by Section 110-F.

8. Sub-section (3) of Section 110-A provides that no application for compensation under this Section shall be entertained unless it is made within sixty days of the occurrence of the accident. The proviso thereto states that the Claims Tribunal may entertain the application after the expiry of the period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. An application for compensation can be made before the Claims Tribunal within sixty days of the occurrence of the accident. The jurisdiction of the Civil Court in relation to such claims is hence barred by Section 110-F. In relation to claims which are instituted beyond the period of sixty days, the Claims Tribunal can entertain them if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The proviso to Sub-section (3) clearly authorises the Claims Tribunal to

entertain as well as to adjudicate upon questions relating to a claim for compensation even if they are made beyond sixty days of the occurrence of the accident, provided the Tribunal is satisfied that there was sufficient cause for the delay. So, all claims arising out of accidents which occurred more than 60 days prior to the making of the application, are claims which can be adjudicated by the Tribunal. The applicants have a right to invoke the jurisdiction of the Claims Tribunal to adjudicate upon the question of the condonation of delay in making the claim, and, if the Tribunal condones the delay, the applicants have a right to an adjudication on the merits; once the delay is condoned, the Claims Tribunal cannot refuse adjudication of the questions relating to the merits of the claims for compensation. The jurisdiction of the Civil Court becomes completely excluded by the order of the Tribunal condoning the delay. Suppose in a case the Tribunal is not satisfied that the applicant was prevented by sufficient cause from making the application in time then, on this view, the Tribunal would become incompetent to entertain the claim for compensation; that is to say, the questions on the merits of the claim for compensation cannot be adjudicated by the Claims Tribunal. In view of the specific language of Section 110-F debarring the Civil Court from entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal." It is clear that, on the Tribunal becoming incompetent to adjudicate upon questions on the merits of the claim, the civil courts' jurisdiction to entertain those questions will revive. In this view, no right to recover compensation vested in an aggrieved party will be defeated entirely. He will have his remedy either before the Claims Tribunal, or before the Civil Court.

9. In a case where the Claims Tribunal is constituted after the expiry of sixty days from the occurrence of the accident, the person entitled to compensation would not be completely at the mercy of the Claims Tribunal. Even if the Claims Tribunal refuses to condone the delay, he can pursue his remedy in the Civil Court.

10. The position appears to be that after the constitution of the Claims Tribunal, the Civil Court is prima facie debarred from entertaining any claim for compensation. But if the Claims Tribunal refused to condone the delay in a particular case, the Civil Court can entertain the claim and adjudicate upon its merits. Section 110-F will not bar its jurisdiction in such cases. In the present case, the suits were instituted on 24th May, 1967 after the Claims Tribunal had been constituted on 22nd April, 1967. The learned Civil Judge was justified in taking the view that the Civil Court had no jurisdiction to entertain the claims.

11. The next and more important question is as to the extent of the jurisdiction of the Claims Tribunal. In *The New India Assurance Co. Ltd. and Others Vs. Smt. Shanti Misra and Others*, , a learned Single Judge of this Court held that the Tribunal had no jurisdiction to entertain claims in respect of accidents which occurred prior to the constitution of the Tribunal. The same view has been taken by the Madhya Pradesh High Court, *Kumari Sushma Mehta Vs. Central Provinces*

Transport Services Ltd. and Others, . On the other hand, another learned Single Judge of this Court in Mangat Ram Vs. Motor Accidents Claims Tribunal and Others, held that the Tribunal had jurisdiction to entertain claims for compensation even where the accident took place prior to its constitution. The Civil Court was debarred from entertaining such claims after the Tribunal had been constituted. The same view has been taken by the Bombay High Court, Manibai and Another Vs. Raj Kumar Harpal Deo and Another, , the Madras High Court V.C.K. Bus Service (P) Ltd., Coimbatore and Another Vs. H.B. Sethna and Others, , the Punjab High Court Unique Motor and General Insurance Co. Ltd. Vs. Kartar Singh and Another, overruling Mulak Raj Bhola Shah Vs. Northern India Goods Transport Corporation Ltd. and Others, and the Gujarat High Court, Natverlal Bhikhalal Shah Vs. Thakarda Khodaji Kalaji and Others,

12. The question which requires consideration is whether the existence of the Claims Tribunal on the date of the occurrence of the accident is a requisite condition for the entertainment of a claim by the Tribunal. In order to determine the jurisdiction of a statutory tribunal, the court has to examine the language of the provisions and give effect to its natural meaning. u/s 110 (1), the State Government is empowered to constitute a Claims Tribunal for a specified area for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, arising out of the use of motor vehicles. This provision does not curtail or qualify the classes or categories of claims which the Claims Tribunal could adjudicate. All claims for compensation in respect of accidents involving death or bodily injury are within the purview of the Tribunal. There are no express words, nor do the used words raise an implication of any restriction as to the time of the occurrence of the accident, before the claim for compensation in relation to it could be within the jurisdiction of the Tribunal. This provision does not postulate that the accident must occur after the establishment of the Tribunal in order to enable the Tribunal to adjudicate a claim for compensation relating to the accident. If the Legislature had intended to limit the jurisdiction of the Claims Tribunal to accidents occurring after its establishment, it would have said so. It has expressly said so in Section 110-F while debarring the jurisdiction of the Civil Court. The bar to the jurisdiction of the Civil Court was created with effect from the establishment of the Claims Tribunal. A similar restriction might have easily been imposed in Section 110 (1). But, we find the Legislature using words of wide and general amplitude so as to bring within the purview of the Claims Tribunal, claims in respect of accidents occurring prior to as well as after the constitution of the Tribunal

13. Section 110-A authorises the making of an application for compensation. Under it, a claim for compensation can be made if it arose out of an accident of the nature specified in Sub-section (1) of Section 110. As already seen, that provision does not confine the nature of accidents to those occurring after the constitution of the Tribunal.

No such condition was imposed u/s 110-A either.

14. Sub-section (3) of Section 110-A prescribes the period of limitation for an application for compensation made before the Claims Tribunal. Under it, the application must be made within 60 days from the date of the occurrence of the accident. It was suggested that this provision contemplates the existence of the Claims Tribunal on the date of the accident; because, if the Tribunal was not in existence, the application could not possibly be made to it. After the constitution of the Tribunal, the Civil Court's jurisdiction is also barred. So in such cases the right to compensation becomes unenforceable. This presents no insuperable difficulty, so that the Court may stretch the language of Sub-section (3) and introduce another condition, namely that the tribunal must exist on the date of the accident. If the Tribunal has not been constituted, the aggrieved person obviously cannot make an application before it. In that situation, the jurisdiction of the Civil Court remains and the aggrieved person can take proceedings there. Even in those cases where the accident took place more than sixty days prior to the constitution of the Tribunal, but no proceedings were taken in the Civil Court till the establishment of the Tribunal, the aggrieved person has the right to ask the Tribunal to condone the delay; and in case that is refused, it is still open to him to take proceedings in the Civil Court for compensation. The right to compensation which inheres in the aggrieved person does not become extinguished or unenforceable.

15. On the other hand, the suggested interpretation that Sub-section (3) of Section 110-A postulates the existence of the Tribunal on the date of the accident, creates an anomalous position, when considered in the light of Section 110-F. Take a case where an accident occurs 10 days prior to the establishment of the Tribunal. The aggrieved person can approach the Civil Court only during the 10 days, that is, till the constitution of the Tribunal, though the period of limitation is much more, for a suit for compensation in the Civil Court; and, since the accident occurred prior to the establishment of the Tribunal, the Tribunal is debarred from entertaining the claim. In this view, the practical result is that the period of limitation available to the aggrieved person to institute proceedings in the Civil Court is arbitrarily cut down. The golden rule of interpretation of statutes is that a construction which creates anomalous situations, should, if possible, be avoided.

16. The suggested interpretation does violence to the language of Sub-section (3) of Section 110-A. Under it, the Claims Tribunal can entertain claims in relation to accidents which have occurred within sixty days of the making of the application. But, on the suggested interpretation, the Tribunal cannot entertain a claim even if the application is made within sixty days of the date of the accident, if the Tribunal was established after the accident. In this way a provision laying down the period of limitation for making an application to the Tribunal is employed to restrict or circumscribe the extent of the jurisdiction of the Tribunal. In our opinion, it is not permissible to do so; because, as seen above, Section 110 (1), which lays down the extent of the jurisdiction of the Tribunal does not require the existence of the Tribunal on the date of the accident. Section 110-A

(3) only prescribes the period of limitation. It does not deal with the extent of jurisdiction of the Tribunal.

17. The learned Single Judge of this Court in *The New India Assurance Co. Ltd. and Others Vs. Smt. Shanti Misra and Others*, (referred to earlier), observed that claims in respect of accidents which took place more than sixty days prior to the constitution of the Tribunal would be barred, if Sections 110 to 110-F were given retrospective effect, even though suits in respect of them could be filed within 2 years from the date of the accident. The learned Judge did not discuss the point or give any reasons for this view. As seen above, no claim gets barred totally. On the view that this class of claims become barred the learned Judge held that the principle that retrospective operation ought not to be given to a statute so as to affect vested rights, was attracted. On that basis, Section 110-A was constructed as being prospective, with the result that no application could be made to the Tribunal if it had not been established on the date of the accident.

18. With respect, we are unable to endorse this view. The presumption against retrospective operation of a statute does not apply to procedural matters.

19. A person has a vested right to claim compensation. But does have a vested right to the choice of forum ? Sulaiman, A. C. J. in *Hazari Tewari Vs. Mt. Maktula Chaubain and Another* held in the negative. It was observed that the right of action was something different from the choice of forum. The choice of forum is a matter of procedure and is not a substantive right. In *Baijnath Vs. Doolarey Hajjam*, Sulaiman, A. C. J., held that the rule of limitation is a rule of procedure.

20. In *Anant Gopal Sheorey Vs. The State of Bombay*, , the Supreme Court has declared:--

"No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an act of Parliament the mode or procedure is altered he has no other right then to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective."

The relevant law in force at the time of the institution of a particular action would govern procedural matters like the forum, where the action could be instituted, and the period of limitation within which it could be done. The provisions relating to the choice of forum and limitation, being procedural, would normally operate retrospectively, in the sense that they would apply to all actions instituted after their enactment, unless there is a distinct provision to the contrary. So, the retrospective operation of Section 110-A (3) cannot be avoided on the supposition that it will affect the litigant in relation to choice of forum and limitation.

21. The various cases relied upon in *New India Assurance Co.*'s case laying down the principle of not applying a limitation statute retrospectively, recognise that

that principle applies only if the Legislature has not, either expressly or by necessary implication, given retrospective operation to the relevant provision. If the Legislature has made a provision retrospective expressly or by necessary implication, the Courts cannot by the process of interpretation, fritter it away. In view of the Proviso to Sub-section (3) of Section 110-A, the Claims Tribunal has jurisdiction to adjudicate upon claims in relation to accidents which may have occurred more than 60 days to the institution of the claim, provided the Tribunal is satisfied that there was sufficient cause for the delay. Thus, the Legislature has expressly authorised the Tribunal to entertain claims, even though the cause of action may have arisen years and years earlier. The retrospective operation of the provision comes into existence on the Tribunal making an order that the applicant had sufficient cause for the delay in making the application. This retrospectivity could not be tinkered with on the ground of any supposed hardship, or on the ground that vested rights were adversely affected.

22. In *V.C.K. Bus Service (P) Ltd., Coimbatore and Another Vs. H.B. Sethna and Others*, , the Madras High Court observed that Sub-section (3) of Section 110-A would not apply to claims arising out of accidents which took place before the constitution of the Tribunal. The result would be that the Tribunal would be bound to entertain claims however stale, without requiring the applicant to show cause for the delay. This construction does not appeal to us. It goes contrary to the jurisdiction conferred on the Tribunal by the Proviso to entertain claims made beyond sixty days of the accident only if it was satisfied that there was sufficient cause for the delay. The Bombay High Court, *Manibai and Another Vs. Raj Kumar Harpal Deo and Another*, and the Gujarat High Court *Natverlal Bhikhalal Shah Vs. Thakarda Khodaji Kalaji and Others*, have held that Section 110-F does not debar the Civil Court from continuing to deal with cases pending before it on the date of the establishment of the Claims Tribunal. *Prima facie*, we are in agreement with this view. But, it is not necessary to express a concluded opinion, because that problem does not arise in the present case.

23. In the present cases, the proceedings were initiated in the Civil Court on 24-5-1967 after the constitution of the Claims Tribunal in April, 1967. On that date, the claims could be entertained by the Claims Tribunal provided it condoned the delay under the proviso to Sub-section (3) of Section 110-A, Motor Vehicles Act. In case the Tribunal condoned the delay and thereby entertain the claim applications the Civil Court will not have jurisdiction to entertain or adjudicate upon the claims; but if the Tribunal refuses to condone the delay and dismisses the claim applications on that ground, the jurisdiction of the Civil Court to entertain and adjudicate upon the claims would revive. In that event the Civil Court will have jurisdiction to entertain and dispose of the applications for permission to sue *in forma pauperis* and thereafter the suits themselves on the merits. In this view, the order passed by the learned Civil Judge rejecting the two applications for leave to sue *in forma pauperis* are set aside. The matter is remanded back to the learned Civil Judge. The Court will, for the time being stay the hearing of these applications, and await the decision of the Tribunal on the

applications made by the applicants for the condonation of the delay in instituting the claim before it and thereafter pass appropriate orders in the light of the observations made above.

24. The view taken by the Claims Tribunal that the Tribunal had no jurisdiction to entertain these claims is erroneous. The orders of the Tribunal are set aside and the matter is remitted to the Tribunal for considering on merits the applications for the condonation of delay. We order accordingly. The parties shall bear their own costs here and below.