

(1986) 01 AHC CK 0030
In the Allahabad High Court
Case No : F.A.F.O. No. 216 of 1979

Dhan Raji and Others

APPELLANT

Vs

New India Insurance Co. and Others

RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 110A

Citation : (1986) 59 CompCas 805

Hon'ble Judges : N.D. Ojha, J; B.L. Yadava, J

Bench : Division Bench

Judgement

1. Appellant No. 1 is the widow whereas appellant No. 2 is the minor son of one Ram Kishun, who met with an accident and died. The appellants made an application for compensation before the Motor Accidents Claims Tribunal, Varanasi, under the Motor Vehicles Act.
2. This application was made beyond the prescribed period of application and was accompanied by an application u/s 5 of the Limitation Act, 1963, for condonation of the delay. The application for condonation of delay was, however, dismissed by the Claims Tribunal and as a consequence thereof, the claim petition was also dismissed as time-barred.
3. The first appeal from order has been preferred against the order whereby the application u/s 5 of the Limitation Act, 1963, was dismissed.
4. A preliminary objection has been raised by the counsel for the respondents that this appeal is not maintainable inasmuch as no appeal is prescribed against an order dismissing an application u/s 5 of the Limitation Act. The appeal was admitted and in due course, the record of the Claims Tribunal was summoned and is before us. Counsel for the appellant made a request that this first appeal from order may be converted into a writ petition under Article 226 of the Constitution,

5. Having heard counsel for the parties, we are of opinion that on the facts of the instant case, the prayer made by the counsel for the appellant deserves to be granted. Court fee of Rs. 10 has already been paid on the memorandum of appeal and an additional court fee of Rs. 90 has been supplied today by the counsel for the appellant. He is permitted to convert this memorandum of appeal into that of a writ petition. It was urged by the counsel for the petitioner that the delay which was caused in filing the claim petition was on account of the fact that at the time when Ram Kishun died, appellant No. 1, who is his widow and is natural guardian of appellant No. 2, was pregnant and had also fallen ill on account of the shock caused by the death of her husband and it was under these circumstances that the claim petition could not be filed within limitation.

6. A perusal of the claim petition which was filed on January 10, 1978, indicates that at that time, the age of appellant No. 1 was 20 years and of her minor child about 6 months. It has been emphasised by counsel for the petitioner that even though no counter-affidavit was filed on behalf of the respondents, the district judge dismissed the application for condonation of delay by just stating that sufficient cause for the delay had not been made out.

7. Since counsel for the respondents has not been able to point out any material on the record of the case to controvert the facts stated in the affidavit filed in support of the application for condonation of the delay in making the claim petition, we find substance in the aforesaid submission. In *Juggi Lal Kamla Pat Vs. Ram Janki Gupta and Another*, it was held by a Division Bench of this court that a statement on oath, whether true or false, has to be met by a counter-affidavit in reply, by challenging the statement by cross-examining the deponent. If that is not done, it would be presumed that the allegations, if untrue, would have been rebutted by the other side. It was further held that in the absence of a counter-affidavit, it was not open to the court to disbelieve the allegations made in the affidavit. We are accordingly of opinion that the Claims Tribunal committed a manifest error of law in dismissing the application for condonation of delay.

8. In the result, this writ petition succeeds and is allowed. The impugned order passed by the Claims Tribunal on March 10, 1979, as well as the consequential order of the same date dismissing the claim petition as time-barred is quashed and the Tribunal is directed to decide the claim petition on merits in accordance with law after hearing the parties.

9. In the circumstances of the case, however, there shall be no order as to costs.