

(1994) 09 OHC CK 0004

In the Orissa High Court

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Shakti Prasad Mishra and Another

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1996) 1 ACC 310

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Judgement

R.K. Patra, J.—This is an appeal by the insurer challenging the judgment of the Second Motor Accidents Claims Tribunal awarding compensation of Rs. 70,000/- to respondent No. 1.

2. Briefly stated, the case of respondent No. 1 is that on 25.10.1988 at about 11.30 a.m. while he was standing in front of the office of United Bank of India, Sector 19, Ambagaon-1-G-H Road, Rourkela, the offending scooter bearing registration No. ORE 1333 being driven rashly and negligently dashed against him. As a result of the accident, he sustained multiple injuries on his body including fracture of his left leg. He was removed to Vesaj Patel Nursing Home, Rourkela, where he was treated as indoor patient for about a fortnight. He underwent operation of his left leg and steel plate was fixed on his fractured bone. He was an "A" Class contractor under the Rourkela Steel Plant and was earning about Rs. 30,000/- per month. On that basis he claimed a sum of Rs. 70,000/- as compensation. The Tribunal came to hold that the accident took place due to the rash and negligent driving of the offending scooter and granted a sum of Rs. 70,000/- as compensation to respondent No. 1 with simple interest at the rate of 12 per cent per annum from the date of application dated 21.12.1989.

3. for the appellant strenuously contended that the claim application having been made beyond one year of the occurrence of the accident, the Tribunal had no jurisdiction to condone the delay Under Sub-section (3) of Section 166 of the

Motor Vehicles Act, 1988 (hereinafter referred to as "the new Act"). It was also contended that the Tribunal even without notice to the appellant had condoned the said delay.

4. In order to appreciate the contention of the appellant, following basic facts are necessary to be noted.

The accident took place on 25.10.1988 when the Motor Vehicles Act, 1939 (old Act) was in force. The new Act came into force with effect from 1.7.1989. The respondent No. 1 filed claim application u/s 166 of the new Act on 21.12.1989. Thus, there was delay of about fourteen months in filing the application. Unlike correspondence provision contained in Section 110-A(3) of the old Act, Sub-section (3) of Section 166 of the new Act contemplates only limited power of condonation of delay in filing the claim. It states as follows:

No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

It is now settled by the judgments of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, , that in a case in which the accident took place when the old Act was in force and the claim petition was filed after enforcement of the new Act, question of condonation of delay would be governed by the new law (Section 166(3) of the new Act) and delay of more than six months in filing the claim petition would not be condoned.

5. Perusal of Sub-section (3) of Section 166 of the new Act clearly shows that the said provision is pre-emptory. It unmistakably provides that no application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. The proviso, however, states that the Claims Tribunal may entertain the application after the expiry of period of said six months but not later than twelve months. The proviso to Section 110-A(3) of the old Act conferred wide discretion on the Tribunal to entertain the claim petition on being satisfied that the applicant was prevented by sufficient cause from making the application in time. The proviso to Section 166(3) of the new Act, however, limits the power of condoning delay for six months only. There is no judicial discretion to relieve a person from the operation of the aforesaid provision. The Tribunal was bound to take notice of the provision of Sub-section(3) of Section 166 of the New Act and give effect to it. This mandatory provision could not have escaped from the notice of the Tribunal, particularly when the respondent No. 1 along with the claim application had put in the application for condoning the delay. By order dated 11.4.1990 when the Tribunal condoned the delay, it not only committed illegality in not noticing the appellant in the matter of limitation but

also overlooked the fact that claim application was made after about fourteen months of the occurrence of the accident and exercise of its power of condoning delay is available when there is delay of six months and not beyond that. Admittedly, the claim application was made after fourteen months of the occurrence of the accident. The power of condoning delay having been limited by law, the Tribunal has clearly acted without jurisdiction in condoning the delay. It, therefore, follows that the impugned judgment of the Tribunal has to be set aside as without jurisdiction.

6. In the result, the impugned judgment is set aside and the appeal is allowed. There would be no order as to costs.