
(1965) 04 MAD CK 0035
In the Madras High Court
Case No : A.A.O. No. 229 of 1964

G. Gopalaswami

APPELLANT

Vs

G. Navalgaria and Others

RESPONDENT

Date of Decision : 23-04-1965

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : AIR 1967 Mad 403 : (1966) ILR (Mad) 182

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

(1) This is an appeal by the injured person in a motor accident against the order of the Motor Accidents Claims Tribunal dismissing an application for excusing the delay in filing the main application for compensation u/s 110--A(3) of the Motor Vehicles Act. The appellant met with the accident on 15-9-1961. It is admitted that he sustained a compound fracture of the right leg. He was admitted in the hospital till 11-7-1962, when he was discharged due to want of accommodation in the hospital. It is stated that he continued to be in bed in the house of a friend of this till 15-10-1962, when he filed this application for excusing the delay in filing the claim petition u/s 110--A(3) of the Motor Vehicles Act. Section 110--A(3) of the Act provides that no application for compensation shall be entertained unless it is made within sixty days of the occurrence of the accident. The proviso to this section empowers the Claims Tribunal to entertain the application after the expiry of the said period of 60 days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The tribunal dismissed the petition mainly on the ground that he was discharged on 11-7-1962, as there was no necessity to detain him in the hospital any further, and that would indicate the petition ought to have been filed on 11-7-1962. The Tribunal was not satisfied with the affidavit of the claimant that it was not possible for him to file the petition before 15-10-1962.

(2) A preliminary objection was taken to the maintainability of the appeal. It was

submitted that u/s 110-D and appeal is provided to a person aggrieved by an award of a Claim Tribunal. It was contended that the order of the Claim Tribunal refusing to entertain the application which was filed 60 days after the date of the accidents is not an award. I am unable to accept this contention, for the order of the Tribunal refusing to entertain an application puts an end to the claims an application puts an end to the claim and decides the application once for all against the claimant. A regarding of Section 110--D does not warrant the restricted meaning that an appeal is available only against the order grating or refusing the award. The meaning of the word "award: is "to adjudge, grant.... judicial decision." The word award is used to include a decision by the Claims Tribunal in dealing with an application for compensation arising out of an accident. To construe the word award to include only the determination or refusal to grant any compensation may be giving a very restricted meaning. When the Tribunal decides to entertain an application after the expiry of the sixty days of refuses to entertain an application, the decision is judicial in character, and is an award. Section 110--D provides right of appeal to any person aggrieved by an award of the Claims Tribunal, and if the order refusing to excuse the delay is an award, there can be no difficulty in holding that appeal lies against such order under S. 110--D.

(3) Reliance was placed on the decision of the Supreme Court in Surajmull Nagarmull Vs. State of West Bengal, where it was held that u/s 19 of the Defence of India Rules, an appeal is provided against an award where the amount of compensation does not exceed Rs.5000/- in lump or Rs.250 per mensem. The wording of the proviso to section 19 is materially different from S. 110--D. Under the Defence of India rules an appeal is provided only against an award where the amount of compensation awarded does not exceed Rs.5000. On the wording of the proviso the Supreme Court held that the right to appeal does not depends upon the claim made by the claimant either before the enquiring authority or the arbitrator or before the High Court but depend solely upon the amount of compensation awarded by the arbitrator. In this case, u/s 110--D clause(2), the right of appeal is taken away against in dispute in the appeal is less than Rs.2000. Thus even though the Tribunal might have awarded, say Rs.100. if the amount in dispute in the appeal, that is if the value of the appeal is Rs.2500, the right of appeal is not taken away under the sub-section. In this case, it is admitted that the claim is for Rs.25,000. This decision has, therefore, no application to the facts of the present case. In the result. I hold that the appeal is maintainable.

(4) On the merits, I am unable to agree with the conclusion arrived at by the Tribunal. After remarking that no scrap of paper has been placed on record on behalf of the petitioner and that the hospital records were not forthcoming, the Tribunal observed that it was not possible to believed that on 11-7-1962 the petitioner was discharged from the hospital for want of accommodation and, if the discharge was on 11-7-1962, the presumption is that he was discharged as there was no necessity to detain him in the hospital any further. Learned counsel

for the appellant submitted that before the hearing of this petitioner he had applied for copies of the hospital records and subsequent to the petition he had obtained copies which would prove his stay in the hospital upon 11th July 1962. further, the presumption that when a person is discharged from the General hospital there is no necessity for detaining him any further in the hospital is not warranted when it is common knowledge that for want of accommodation several person are discharged before complete recovery. Regarding the delay in filing the main petition after his discharge on 11th July 1962, upto 15th October 1962, comment is made by the Tribunal. The case for the appellant is that he was confined in bed as he was not able to move about even after his discharge. There are no grounds for rejecting this statement as the appellant who had been very severely injured would not have remained idle unless for valid reasons. Taking all the circumstances into consideration, the explanation offered by the appellant appears to be quite reasonable and has to be accepted.

(5) In the result, the order of the Tribunal is set aside and the delay in filing the main petition is excused and the Tribunal is directed to take the main petition for compensation on its file and dispose it of according to law. Considering the fact that the accident was on 15-9-1962, that is more than three and a half years ago, the Tribunal would expeditiously dispose of this claim.

(6) Appeal allowed.