

(1991) 05 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1936 of 1990

Gaindi Devi

APPELLANT

Vs

Motor Accidents Claims Tribunal and Others

RESPONDENT

Date of Decision : 08-05-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 39A, 41
Employees Compensation Act, 1923 — Section 21
Motor Vehicles Act, 1988 — Section 140

Citation : (1992) ACJ 71

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Advocate : G.C. Mathur, for the Appellant; S.K. Jain and M.M. Ranjan for S.N. Kumawat, for the Respondent

Final Decision : Allowed

Judgement

N.L. Tibrewal, J.—The petitioner has filed this petition under Article 226 of the Constitution of India, seeking the following reliefs:

(a) That your Lordships would be graciously pleased to admit and accept this writ petition and pass an order u/s 92-A of the Act of 1939 (now Section 140 of the Act of 1988) to pay the petitioner a sum of Rs. 25.000/- along with interest from the date of filing of the claim petition, i.e., 5.7.1985.

(b) That the record of the case titled as "Gaindi Devi v. Mohd. Mian" pending before the Motor Accidents Claims Tribunal, Alwar be called for.

(c) That this case be transferred to the Motor Accidents Claims Tribunal, Jaipur and the direction be issued to dispose it expeditiously.

(d) That all the District and Sessions Judges of the districts in Rajasthan be instructed to pay due attention to the matters of compensation under Motor Vehicles Act and particularly pass the interim order to give relief to the victims of the unfortunate accidents and their dependants as per the spirit of the provisions

of interim relief as no fault liability.

2. It has been stated in the writ petition that the petitioner's husband Gopal alias Ramgopal Meena died in an accident on 4.2.1985 when he was going to Delhi from Jaipur in a jeep bearing registration No. RJL 9495. The accident was caused by a truck, bearing No. RSQ 3855, causing serious injuries to her husband on account of which he died.

3. The petitioner then filed a claim petition before the Motor Accidents Claims Tribunal, Alwar on 5.7.1985 under Sections 110-A and 92-A of the Motor Vehicles Act, 1939 (hereinafter to be referred as "the Act") for a sum of Rs. 6,51,000/- on her own behalf and on behalf of her minor son Sheo Ram and minor daughter Jamuna Devi. Respondent Nos. 2, 3 and 4 were impleaded in the said petition, being driver, owner and insurer of the aforesaid truck and respondent Nos. 5, 6 and 7 were impleaded in the claim petition, being driver, owner and insurer of the aforesaid jeep. The said petition is now pending in the court of Additional District Judge No. 2, Alwar and the present number of the case is 113 of 1990.

4. It was stated that in spite of statutory provisions contained in Section 92-A of the Act, as amended in the year 1982, no order was passed by the concerned court for the interim relief as provided in the said section, which is known as "liability without fault". The learned Counsel for the petitioner further submits that barring few Motor Accidents Claims Tribunals, established under the Act, such cases are being tried by the court of District and Sessions Judges, who are heavily burdened with other cases also. According to the learned Counsel, the matters of compensation, like the present one, should be given utmost priority to achieve the object contained in the provisions of the Act, which is a social legislation. It has been further stated in the petition that the petitioner is a resident of Jaipur and all other non-applicants also belong to Jaipur or nearby district, as such, it is convenient for all if the aforesaid case is transferred for decision to the Motor Accidents Claims Tribunal, Jaipur.

5. So far the first relief is concerned, this Court had granted the same vide order dated 6.2.1991 and the petitioner has received the amount from the insurance company in pursuance to the said order. In Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, the fatal accident occurred in November 1971, but the Motor Accidents Claims Tribunal delivered its judgment after five years. The Hon"ble Supreme Court observed:

The delay of five years in such cases is a terrible commentary on the judicial process. If only no fault liability, automatic reporting by the police who investigate the accident in a statutory proforma signed by the claimants and forwarded to the Tribunal as in Tamil Nadu and decentralised empowerment of such Tribunals in every district coupled with informal procedures and liberation from court fees and the sophisticated rules of evidence and burden of proof were introduced-easy and inexpensive if the State has the will to help the poor who mostly die in such accident-law's delays in this compassionate jurisdiction can be

banished. Social justice in action is the measure of the State's constitutional sensitivity. Anyway, we have made these observations hopefully to help focus the attention of the Union and the States.

6. In *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC), the Hon'ble Supreme Court took notice of the fundamental right of the litigant to have access to court as an aspect of social justice. Para 5 of the said judgment may be reproduced for the sake of convenience:

Two principles are involved. Access to court is an aspect of social justice and the State has no rational litigation policy if it forgets this fundamental. Our perspective is best projected by Cappelletti, quoted by the Australian Law Reform Commission:

The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement-the most "basic human right"-of a system which purports to guarantee legal right.

We should expand the jurisprudence of access to justice as an integral part of social justice and examine the constitutionalism of court fee levy as a facet of human rights highlighted in our nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39A, where an indigent widow is involved, a second look at its policy is overdue. The court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as court fee, is fully reviewed by this Court. Before parting with this point we must express our poignant feeling that no State, it seems, has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in Order XXXIII, Rule 9-A, Civil Procedure Code, although several years have passed since the enactment. Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the State does not bring into force by wilful default in fulfilling the *conditio sine qua non*. It is a public duty of each great branch of Government to obey the rule of law and uphold the trust with the Constitution by making rules to effectuate legislation meant to help the poor.

7. Chapter VII-A in the Act was inserted by the Motor Vehicles (Amendment) Act, 1982, with a social obligation, presumably, on the suggestions which were made by the Hon'ble Apex Court of this country in various judgments, keeping in view that the victims or their relatives are mostly below the poverty line and litigation is a compounded misery. The principle of "no fault liability" has been introduced so that the victims or their relatives should get monetary assistance immediately without going into the merits of the case and without deciding as to whether the

driver of the vehicle acted negligently or not. In order to meet the above social demand, on the recommendations of Indian Law Commission, Chapter VII-A was introduced in the Act. The provisions cast a statutory duty on the Tribunal to act suo motu u/s 92-A of the Act or Section 140 of the new Act of 1988. This section, in terms, does not contemplate filing of an application for claiming relief thereunder. It is unfortunate that the courts are not acting in the spirit the provision has been enacted to meet the social demand.

8. In the instant case, though the claim petition was filed in the year 1985, but no orders were passed by the concerned court u/s 92-A and the petitioner had to approach this Court by filing the writ petition in the year 1990. Such delay in passing orders u/s 92-A of the Act cast a slur on the functioning of our courts. As a note of precaution, it is made clear that whenever such lapses are found in future, the same shall be taken very seriously by this Court and a direction be issued to all the concerned courts to pass orders, u/s 92-A or Section 140 of the new Act of 1988, immediately even without waiting for an application by the victims. It is a statutory function of the court and it should be performed with utmost sincerity and in the spirit the provision has been enacted. For, law must keep its promise to justice.

9. Another aspect, which has been highlighted in the petition, also needs serious consideration. I have been informed that Motor Accidents Claims Tribunal has been established in Rajasthan only at few places, namely, at Divisional Headquarters, with the result that these claim petitions under the Motor Vehicles Act are decided by the District Judges or Additional District Judges who are already heavily burdened with other cases. Though it is for the State Government to consider for the establishment of separate Motor Accidents Claims Tribunal in a particular area, keeping in view the number of cases, but even in the existing set-up the matters of accident claims should get high priority even when they are being tried by the court of District Judge or Additional District Judge along with other cases. For this purpose, I would like to refer what Krishna Iyer, J., said in *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC):

Another aspect must be noticed before we part with this petition. In many States, for want of judicial manpower or other pathological causes, the accident claims pend before Tribunals in heartless slowness. Courts must give this bleeding class of cases high priority, adopt simplified procedures.

Without breach of national justice, try out pre-trial settlements and narrow down the controversy and remember, that "wiping every tear from every eye" has judicial relevance. For, law must keep its promise to justice.

Similarly the following from *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others*, can be conveniently reproduced in this connection:

...A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by Tribunals. We must remember that judicial Tribunals are State organs and Article 41 of the Constitution lays the

jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so, that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

10. We expect from all courts, deciding claim matters under the Motor Vehicles Act, to give high priority to these cases and no petition should remain pending for more than two years. If such petitions remain pending for years, as in the present case, then the very object of this social legislation shall stand defeated. The dependants of the victims need immediate monetary help as the bread-earner in the family is the victim of the motor accident. It is a matter of some relief that Lok Adalats in Rajasthan are playing a vital role in this sphere in getting settlement of claims. But that is not enough and the demand on the courts in deciding such cases with priority cannot be ignored on this ground alone.

11. The learned Counsel for the petitioner further submits that there is no provision in the Motor Vehicles Act authorising a Tribunal or a court to transfer claim matters pending before it to other Tribunal or court in the State where the case/cases can be more conveniently dealt with, as such, such provision could be introduced in the Act. The learned Counsel drew my attention to a provision contained u/s 21(2) of the Workmen's Compensation Act, 1923. Though it is for the government concerned to make such provision in the Act, but necessity of such provision cannot be denied for various reasons.

12. Now reverting to the prayer made in the writ petition, as I already said above, prayer No. (a) has been granted by this Court.

13. In view of the convenience of the parties, so far transfer of the case to Motor Accidents Claims Tribunal, Jaipur is concerned, the learned Counsel for the non-petitioners have no objection. It is, therefore, directed that the claim petition filed by the petitioner, which is now pending in the court of Additional District Judge, Alwar, bearing No. 113 of 1990, be transferred to the Motor Accidents Claims Tribunal, Jaipur and a further direction is given to the Motor Accidents Claims Tribunal, Jaipur to give priority to the present case, as already five years have passed since the petition was filed. The Additional District Judge No. 2, Alwar, while transferring the file to the Motor Accidents Claims Tribunal, Jaipur, shall fix the date directing the parties to appear in the aforesaid Tribunal at Jaipur.

14. The petition stands disposed of accordingly. The Additional Registrar (Judl.) is also directed that cyclostyle copies of this order should be circulated to all the Motor Accidents Claims Tribunals and District Judges/Additional District Judges hearing claim petitions under Motor Vehicles Act for their guidance.