

(2005) 04 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 820 of 1994

Ganpat Tiwari and Others

APPELLANT

Vs

Suraj Singh and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 161, 166(3), 168
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2005) 3 ACC 573 : (2005) 3 CivCC 620 : (2005) 2 RLW 1471 :
(2005) 3 WLC 600

Hon'ble Judges : J.R. Goyal, J

Bench : Single Bench

Advocate : Ram Singh, for the Appellant; Amit Sharma, for Respondent Nos. 1 and 2 and Rajesh Sharma, on behalf of T.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

J.R. Goyal, J.—This appeal is directed against the judgment and order dated 28.3.1994 passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur by which the claim petition has been dismissed treating it to be time barred.

2. Brief facts leading to the filing of the present appeal are that on 6.6.1992 at about 9 am opposite to M/s. Shakeel Meat House, Parivahan Marg, Jaipur deceased Jagdish Tiwari became victim of an accident because of rash and negligent driving of tempo No. RNQ 9545 driven by Suraj Singh-respondent No. 1. The deceased Jagdish Tiwari died due to fatal injuries sustained in the accident. After the said accident the driver of the tempo involved in the accident ran away along with his tempo from the spot. Case was registered under Sections 279 & 304A 1PC. During the investigation, the claimants preferred the claim u/s 161 of the Motor Vehicles Act, 1988 (in short the Act, 1988) under the special provisions as to get compensation in case of hit and run motor accident. Thereafter, charge-sheet had been filed against Suraj Singh-respondent No. 1. On this, the claim petition was filed by the claimants-heir of the deceased on

4.11.1993 u/s 168 of the Act, 1988. Treating it as time barred the claim petition was dismissed.

3. Aggrieved by this, the present appeal has been preferred by the appellants-claimants.

4. Heard learned counsel for the appellants as well as respondent No. 3-Insurance Company.

5. Learned counsel for the appellants contended that after the amendment in the Act, 1988 which came into force w.e.f. 14.11.1994 provision of limitation provided under Sub-section (3) of Section 166 has been omitted and thereafter, no period of limitation was provided for filing the claim petition under the Motor Vehicles Act, 1988. Thus by virtue of amendment of 1994 for the accident which took place much prior to the amendment made in the year 1994 if earlier claim petition has not been filed could be filed now by the claimants. Therefore, the claim petition cannot be considered as non-maintainable treating it to be time barred. Reliance has been placed upon *Dhannalal v. D.P. Vijayvargiya & Ors.* I (1996) ACC 603 (SC) : (RLW 1996(2) SC 119.

6. Learned counsel for the respondents submitted that in this matter fatal accident took place on 6.6.1992 and at that time u/s 163(3) of the Act, 1988 period of limitation for filing the claim petition was provided six months and a proviso has also been provided that on satisfaction of the Tribunal that applicant was prevented by sufficient cause from making an application in time, further period of six months could have been allowed for filing the claim petition, but in the instant case, claim petition was filed much after the expiry of a period of one year and thus, the Tribunal rightly dismissed the claim petition treating it time barred.

7. I have considered the rival contentions and perused the record. It is not disputed that in this matter accident took place on 6.6.1992 while the claim petition was filed u/s 168 of the Act, 1988 on 4.11.1993 much after the expiry of a period of one year. At the time of accident and filing of the claim petition provisions of Sub-section (3) of Section 166 were applicable by which maximum period of one year has been prescribed which reads as under:-

"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."

8. It is significant to note that thereafter by the Motor Vehicles amendment Act, 1994 which came into force w.e.f. 14.11.1994, Sub-section (3) of Section 166 has been omitted. Thus, the effect of Amending Act is that w.e.f., 14.11.1994 there is no limitation for filing the claims before the Tribunal in respect of any

accident. This controversy has been considered in detail by the Hon''ble Supreme Court in the case of Dhannalal's case (supra). After examining the effect of various amendments that have been brought about in the Act, the Hon''ble Supreme Court observed in para 6 & 7 as under:-

6. Before the scope of Sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid Sub-section (3) of -Section 166 of the Act has been omitted by Act 54 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14th November, 1994. The effect of the Amending Act is that w.e.f., 14th November, 1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident of the bread-earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escape death some of such victims are hospitalised for months if not for years. In the present case itself the applicant claims that he met with the accident on 4th December, 1990 and he was being treated as an indoor patient treated as an indoor patient till 27th September, 1991. According to us, in its wisdom, Parliament rightly thought that prescribing a period of limitation and restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.

9. Further, after considering the situations which could have been arisen indifferent circumstances the Hon''ble Apex Court observed as under :-

"The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid Amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, High Court or this Court. In such cases, the benefit of amendment of Sub-section (3) of Section 166 should be extended.

10. Thus, in the instant case the ratio laid down in Dhannalal's case (supra), applies with full force to the facts of the present case. After the dismissal of the claim petition by the Tribunal, present appeal is pending before the High Court which is in continuity of the claim petition. In such circumstances when the

Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who die in the accidents, by rejecting their claim at the threshold on the ground of limitation and purposely deleted Sub-section (3) of Section 166, which provided the period of limitation for filing the claim petition and amendment was made by the legislature to give the effective relief to the victims and their families of the motor accidents. In such circumstances and in the light of the above observations of the Apex Court made in the case of Dhannalal's case (supra), the benefit of amendment of Sub-section (3) of Section 166 is also available to the appellants-claimants.

11. Accordingly, I allow this appeal and set aside the order passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur. I direct the Tribunal to entertain the claim petition filed by the appellants and to dispose of the same as early as possible in accordance with law.