
(2005) 03 AP CK 0076
In the Andhra Pradesh High Court
Case No : CRP No. 380 of 2005

K. Umavathamma and Others	Vs	APPELLANT
G. Venkata Chalapathi and Another		RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 158(6), 165(1), 455, 476, 476(1)
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144

Citation : (2005) 3 ACC 66 : (2006) ACJ 1764 : (2005) 3 ALD 10 : (2005) 3 ALT 91 : (2005) 1 APLJ 456

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Kuncham Maheswara Rao, for the Appellant;

Judgement

Elipe Dharma Rao, J.—Being aggrieved of not passing any order in I.A. No. 1327 of 2003 filed u/s 140 of the Motor Vehicles Act, 1988 under "No fault liability" in O.P. No. 283 of 2003 filed under Sections 140 and 166 of M.V. Act read with Rule 455 of the A.P. M.V. Rules, 1989, by the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge, Anantapur, the claimants preferred this civil revision petition, under Article 227 of the Constitution of India.

2. The brief facts that are necessary to dispose of this civil revision petition are that the husband of the first petitioner herein and the father of other petitioners i.e., K.B. Venkata Sivanna, died in a motor vehicle accident that occurred on 6-1-2002 at about 3:00 p.m., near Yerraguntapalli (Tanakal) on Kadiri-Madanapalli Road. Claiming compensation, the petitioners herein filed O.P. No. 283 of 2003 under Sections 140 and 166 of M.V. Act, 1988 read with Rule 455 of A.P M.V. Rules, 1989, claiming compensation of Rs. 30,34,000/- before the learned Chairman, Motor Accident Claims Tribunal, Anantapur. The petitioners also filed I.A.No. 1327 of 2003 in the said O.P u/s 140 of the M.V.Act, claiming Rs. 50,000/- under the principle of no fault liability, pending disposal of the said

claim petition.

3. When this matter was listed for admission, this Court by order dated 14.2.2005 directed the learned Chairman, Motor Accidents Claims Tribunal, Anantapur to explain the reasons as to why the interlocutory application filed u/s 140 of the M.V. Act was not disposed of, having regard to the submission of the petitioners' Counsel that the Petitioners 2 and 3 are studying M.Sc. and M.B.A. respectively, at Bangalore and the daughter i.e., 4th petitioner is of marriageable age. Non-disposal of the said interlocutory application by the learned Chairman, Motor Accident Claims Tribunal, Anantapur, has defeated the very object of Section 140 of the Motor Vehicles Act, which intends to provide immediate succor to the bereaved family. In such circumstances, the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge, Anantapur, was directed to explain the reasons for not disposing the I.A.

4. Pursuant thereto, the learned Chairman, Motor Accident Claims Tribunal, Anantapur, submitted a report the sum and substance of which is that the proceedings under Sections 140 and 166 of the M.V. Act are independent, Rule 476(1) of the A.P.M.V. Rules, 1989 mandates that the application in the case of claim under Chapter X of the Act, in Form CWF (Claim without fault-No fault), whereas, Rule 476(2) of the Rules envisages that Rs. 10/- shall be affixed on such application and such application shall be disposed of within 45 days, from the date of filing thereof. He further explains that there is no bar to file both the claim petition under Sections 140 and 166 of the Act simultaneously or one after the other. What all the learned Chairman, intends to explain is that Rule 476 of M.V. Rules, 1989 does not contemplate filing of interlocutory application in a claim petition u/s 166 of the Act, inasmuch as they are independent proceedings and not inter-dependable, that's how Rule 476(2) imposes a fee of Rs. 10/- payable by the applicant along with the petition filed u/s 140 of the Act. He further adds that the petitioners have filed I.A. No. 1327 of 2003 in O.P. No. 283 of 2003 u/s 140 of the Act claiming relief without paying a fee of Rs. 10/-, as mandated by Rule 476(2) of the Rules. He further makes it clear that had the applicants-petitioners paid Rs. 10/- then there would have been no difficulty to prosecute the application, though according to him, technically the petitioners ought to have filed a separate original petition u/s 140 of the Act.

5. When this explanation was made known to the learned Counsel for the petitioners, he vehemently contends that the petitioners herein have paid a total Court fee of Rs. 212/- and Rs. 18/-, and drew the attention of this Court to the material papers filed along with the C.R.P. Therefore, having regard to these facts, with a view to verify as to whether the version of learned Chairman, Motor Accident Claims Tribunal, Anantapur is correct or the material papers are correct, the Registry was directed to call for the records in I.A. No. 1327 of 2003 in the said O.P.

6. Pursuant to the order dated 2.3.2005, the learned Chairman, Motor Accident Claims Tribunal, Anantapur, submitted that on receipt of this order, he verified

the records and found that the material papers filed by the learned Counsel for the petitioners is correct and since the Court seal, defacing the Court fee stamp of Rs. 10/- exactly fell on "0" of Rs. 10/-, he had unintentionally committed the blunder in identifying the three Court fee stamps as that of Rs. 1/- denomination instead of Rs. 10/- +1+ 1 and, therefore, beseeched pardon in the matter.

7. Be that as it may, I shall now advert to the provisions of the Act, which have a bearing on this issue. Chapter X of the Act speaks of liability without fault in certain cases. This chapter consists of Sections 140 - 144. Section 140 speaks of liability to pay compensation in certain cases on the principle of no fault. Sub-section (1) hereof reads as under:

"..... where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

Sub-section (2) reads thus:

The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under the sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees...."

8. The other provisions of this chapter are not relevant for the disposal of this revision. Let us, now examine Section 166 of the Act, which falls under Chapter XII of the Act, and it reads:

".....Application for compensation: (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165, may be made

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that.....

(2).....

(4) The Claims Tribunal shall treat any report of accident forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act.

The other provisions of this Chapter are not relevant for us, for the disposal of this revision petition. I shall now advert to Rule 476 of the A.P. M.V. Rules, 1989, upon which much reliance is placed by the learned Chairman, Motor Accident Claims Tribunal, Anantapur, in almost cutting the throat of the petitioners and made every attempt to dislodge the claim u/s 140 of the Act.

".....476. Application for claim: (1) Every application in the case of claim under Chapter X of the Motor Vehicles Act, 1988; shall be made in Form CWF (claim without fault);

(2) Fees: Every applicant along with application for claim under Chapter X shall pay a fee of Rs. 10/-

(3) Consideration of the claim: The Claims Tribunal shall follow the procedure of summary trial as contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for the purpose of adjudicating and awarding a claim under Chapter X of the Motor Vehicles Act, 1988;

(4) Application not to be rejected on technical flaw: The Claims Tribunal shall not reject any application made as per the provisions of Chapter X of the Motor Vehicles Act, 1988 on the ground of any technical flaw, but shall give notice to the applicant and get the defect rectified.

(5) Presence of owner and insurer not necessary to award the claim after notice: The Claims Tribunal shall give notice to the owner and insurer, if any of the motor vehicles involved in the accident, directing them to appear on a date not later than 10 days from the date of issue of notice. The date so fixed for such appearance shall also be not later than 15 days from the receipt of the claim application. The Claims Tribunal shall state in such notice, that in case they fail to appear on such appointed date, the Tribunal will proceed ex parte on the presumption that they have no contention to make against, the award of compensation.

(6) Award of Claim.....

(7) Basis to award the claim.....

(8) Limitation for disposal of application: The Claims Tribunal before whom an application for compensation liability arising out of the provisions of Chapter X of the Motor Vehicles Act, 1988, has been made, shall dispose of such an application within forty five days from the date of receipt of such application....."

9. In the light of these sacrosanct provisions of law, now let us examine the actions of the learned Chairman, Motor Accident Claims Tribunal, Anantapur, how far he is genuine in his efforts to help the petitioners-claimants, as he tried to put forth in his explanation.

10. It is submitted by the learned Chairman that he suggested the petitioners to withdraw the application and file a regular O.P. u/s 140 of the Act by fulfilling the requirements, as contemplated under Rule 476 of the Rules. He further

emphasizes that since the petitioners failed to comply with the requirement of payment of Rs. 10/- as contemplated under Rule 476(2) of the Rules, the said petition is not maintainable and non-est in the eye of law. This emphatic explanation of the learned Chairman, however, was without verifying the records, as is evident from his further explanation dated 3.3.2005, whereunder he implores for pardon. It is most unfortunate that such reckless, callous and rigid minded Judicial Officers are designated as Chairman of the Claims Tribunal, when the provisions of the Act and Rules framed under the Act are so flexible and furthers the cause of social justice. As seen above, when the learned Chairman has so much harped upon non-compliance of Rule 476(2) of the Rules in dislodging the claim u/s 140 of the Act, he has conveniently omitted Rule 476(4), which mandates that the Tribunal shall not reject any application made as per the provisions of Chapter X of the M.V. Act, 1988 on the ground of any technical flaw, but shall give notice to the applicant and get the defect rectified and Rule 476(8) mandates for its disposal within forty five days. Had the learned Chairman been genuine in his efforts to help the petitioners-members of the bereaved family, as he tried to expose in the explanations, he would have resorted to put Rule 476(4) into practice, instead of taking shelter under Rule 476(2). The Legislature, in its wisdom, has enacted the Act and the Rules, prescribing presentation of claim petitions before the District Judges, with a view that they shall have a broad outlook and further the cause of beneficial legislation. But the Senior Judicial Officers like the Chairman of the Claims Tribunal are following the provisions of Act and Rules more by way of breach. The learned Chairman, Motor Accident Claims Tribunal, Anantapur, is dare enough to submit explanation, educating this Court that Rule 476 of the Rules does not contemplate filing of interlocutory application in original petition u/s 166 of M.V. Act and they are independent proceedings and not inter-dependable. It is too harsh on the part of the learned Chairman, to say that since the petitioners did not pay Rs. 10/-, on the petition, it is difficult to prosecute the claim. This cut throat attitude on the part of the Senior Judicial Officers is deplorable and has to be deprecated.

11. Without further dwelling on the issue, I would like to refer to a decision in *Sapna Aggarwal and Ors. v. Mohinder Singh and Anr.* 1987 ACJ 826, wherein it is held that the award under no fault liability is an interim award and in passing such award, the Tribunal must use its discretion in such a manner that justice is done between the parties by giving early relief to the claimant and should avoid giving long dates, inasmuch as such an attitude on the part of the Tribunal, would defeat the very object of the legislation. Reference can be had to another decision of Rajasthan High Court in *Narendra Singh Vs. Oriental Fire and General Insurance Co. Ltd., Delhi and Others*, , wherein it is held that the provisions of payment of prompt and immediate compensation in respect of no fault liability is in the spirit of social welfare legislation and should be interpreted beneficially in favour of the claimant and in such a manner the technicalities of law should not be allowed to have any upper hand, to undo and crush the spirit of legislation for

social justice. Joinder or nonjoinders or misjoinder of parties are too technical pleas to circumvent the spirit of such beneficial legislation. The very fact that the Legislature decided to get the amount paid even without ascertaining any fault, prima facie, goes to show that the object is that the claimant should not be allowed to go high and dry for long and they must get immediate relief.

12. Though not relevant for the purpose of disposal of this revision petition, reference may be had to different decisions of the Apex Court and this Court with a view to visualize how liberal the Courts have been in enforcing this piece, of social welfare legislation. The sum and substance of the decision of the Apex Court in Dhannalal Vs. D.P. Vijayvargiya and Others, and the decision of this Court in Talamatla Sugunamma and Another Vs. Ch. Kanakaiah and Another, , is that the Parliament realized the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting the claims petitions only on ground of limitation. It is further observed by the Supreme Court that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred and after the death due to the accident of the bread earner of the family and where the victims escape death some of such victims are hospitalized for months, if not for years, the Parliament has rightly thought that the prescribing a period of limitation and restricting the powers of 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.

13. Further, the Apex Court in a decision K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., , has observed that where negligence for the causation of the accident is alleged, it is no ground to refuse the benefit of interim award of no fault liability. A learned Single Judge of this Court in a decision New India Assurance Company Limited Vs. S.V. Balakishna and Others, , has held that when the accident is alleged to have taken place due to the collision of two vehicles and even if the accident is occurred due to the rash and negligent driving of driver of one of the vehicles, owners of both the vehicles involved in the accident are jointly and severally liable to pay that part of compensation payable under no fault liability.

14. When the provisions of the Act and the Rules are so liberally interpreted by the Apex Court, this Court and other High Courts, it is most disgraceful on the part of the learned Chairman, Motor Accident Claims Tribunal, Anantapur to reject immediate succor to the petitioners, on too technical a ground that a regular petition is not filed, but an interlocutory application is filed. At one stage, the learned Chairman, was not intended to consider the interlocutory application for the simple reason that a fee of Rs. 10/- is not paid, even though it was paid, as required under Rule 476(2), ignoring Rule 476(8) of the Rules.

15. For these reasons, the civil revision petition deserves to be allowed and is accordingly allowed directing the learned Chairman, Motor Accident Claims

Tribunal, Anantapur, to pass appropriate orders in IA No. 1327/2003 within a period of one week from the date of receipt of a copy of this order. No order as to costs.

16. Before parting with the case, I would like to comment on the discharge of judicial functions by the learned Chairman, Motor Accident Claims Tribunal, Anantapur. When the Act and the Rules do not require strict interpretation and strict scrutiny of evidence, the learned Chairman is unable to understand the purport, objects and reasons of the Act. I have my own doubts as to how he is discharging the duties and functions of a Unit Head, apart from the fact the learned Chairman, Motor Accident Claims Tribunal, Anantapur, in the first instance tried to misrepresent the fact that the petitioners have not paid the required Court fee and subsequently, he take shelter under Rule 476(2) of the Rule. As a Portfolio Judge also, I have noticed several lapses on the part of the Officer, both on judicial side and on administrative side. If the Acts, Rules and day-to-day discharging of judicial functions by the Unit Head are dealt with so shabbily by Senior Judicial officers, the people at large, would loose faith in the judicial system of this country. I am pained to note that the officers of the cadre of the District Judge are so rigid and stubborn and to satisfy their egoism, they even play with the rights of bereaved family members. A copy of this order shall remain placed on the personal file of the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge, Anantapur. I further recommend the Officer shall not be posted as a Unit Head atleast for a period of six months. The High Court should consider shifting the Officer from the post of Unit Head, and post at a place where there is no heavy work.