
(2003) 02 CHH CK 0004
In the Chhattisgarh High Court
Case No : Civil Revision No. 191 of 2002

Khorbahrin Bai

APPELLANT

Vs

Tulsa Ram and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Madhya Pradesh Motor Vehicles (Amendment) Rules, 1994 — Rule 225, 226, 227
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 281(2), 283
Motor Vehicles Act, 1988 — Section 140, 166(4), 168(1)

Citation : (2003) 2 MPHT 57

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Hanuman Agrawal, appears to assist the Court as Amicus Curiae, Satish Chandra Verma, for the Appellant; H.B. Agrawal, for Non-applicant No. 3, for the Respondent

Final Decision : Allowed

Judgement

Fakhruddin, J.—Briefly stated facts are that Khorbahrin Bai filed Claim Petition No. 17/85, which was dismissed on 31-8-88 for non-prosecution. The said claimant thereafter filed an application of restoration which was registered as MJC No. 8/88, this application was also dismissed for want of prosecution on 7-4-98 and she thereafter again filed an application which was registered as MJC No. 5/99, this was also dismissed on 21-9-99 for non-prosecution. Another application for restoration was filed, the same was registered as MJC No. 17/99 which was restored by order dated 20-4-2001. Before Claims Tribunal the application was also filed for condoning the delay and the grounds urged for condonation are that the applicant's husband died in an accident occurred in the year 1988 and she is very poor, old and infirm. At the time of accident she was 55 years of age, now she must be about 70 years old. She was somehow or the other passing her days by resorting to begging and she has no funds. This plea for condoning delay has been rejected by impugned order dated 4-1-2002.

2. Learned Counsel for the applicant so also Amicus Curiae submit that the provisions envisaged in the Act are benevolent provisions and in fact in the present case though the claimant is entitled to get even the amount of no fault liability, yet she has not received a single pie. Para 10 of the impugned order has been referred to, which goes to show that service of notice by publication was directed to be made. So far as this aspect is concerned, the Tribunal ought to have considered the provisions envisaged in Sections 166/140 of the Motor Vehicles Act. It is submitted that so far as the claims are concerned, Sub-section (4) of Section 166 of the Act even gives jurisdiction to the Claims Tribunal. Section 166 of the Act is pertinent and quoted herein below:--

"166. 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 where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(3) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) Sub-section (3) omitted by Act 54 of 1994.

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

Perusal of Sub-section (4) of Section 166 shows that the Claims Tribunal is obliged to treat any report of the accidents forwarded to it under Sub-section (6)

of Section 158 of the Act.

Sub-section (6) of Section 158 of the Act is also relevant here which reads as under :--

"158. Production of certain certificates, licence and permit in certain cases.-

(1) *** ***(2) *** ***(3) *** ***(4) *** ***(5) *** ***(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a Police Officer, the officer in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer and where a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a Police Officer, the officer in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer and where a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

3. Counsel for the applicant also referred to Section 168 of the Motor Vehicles Act especially first proviso. Section 168 reads as under :--

"168. Award of the Claims Tribunal.-- (1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the Insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

4. Counsel for the applicant submits that Tribunal in this case directed publication of notice in Newspaper. It is submitted that publication in newspaper is expensive

and the claimants many a time are paupers and have no money as in the present case where the claimant/widow is a beggar. Under the circumstances, in the opinion of this Court it is obligatory on the Tribunal to see that before directing publication the Tribunal should, in such circumstances at least, see as to whether the other modes of services are possible and if it be so, the said mode be adopted. There may be cases where the claimants do not have anything and are resorting to begging, it may not be possible for him/her to get the notice published where it will result in dismissal or denial of total claim on technical grounds like this, in the opinion of this Court, dismissal was not justified on that ground alone. Notice should be free of cost. Publication may be in the conspicuous place. As such, notice may be served by affixture at conspicuous places as deemed fit. If necessary, notice may also be effected through the person who has taken custody of the vehicle. The Tribunal may even direct substituted service of notice through Regd. A/D or service through concerned police station or by special server. Even where the publication is required, the Tribunal shall pass appropriate order keeping in view all the facts and circumstances and in suitable cases costs may be directed to be recovered at the time of passing of the award. The rules framed do not direct payment of Court fee, on the other hand cast duty on the Tribunal to issue notice in any possible manner. In this connection, Rule 283 of M.P. Motor Vehicle Rules, 1974, is also pertinent to be taken into consideration, which reads as under:--

"283. Notice to opposite party and its Examination.-- If the Claims Tribunal does not dismiss the application under Rule 281, it shall issue notice to the parties from whom the applicant claims relief (hereinafter referred to as the opposite party) to show cause against the application on a date of hearing to be specified therein which shall not be less than thirty days from the date of receipt of the notice. Such notice shall be accompanied by a copy of the application.

(2) If the opposite party does not appear on the date specified in the notice or appears and admits the claim, the Claims Tribunal shall forthwith proceed to dispose of the application.

(3) If the opposite party contests the claim, it may file a written statement dealing with the claim raised in the application along with such documents on which it relies on or before the date of hearing and such a written statement and documents shall form part of the record. If no written statement is filed, the Claims Tribunal shall proceed to examine the opposite party and shall reduce the result of the examination to writing.

(4) No document which is not produced by the opposite party on the first hearing shall, without the sanction of the Claims Tribunal, be received in evidence on behalf of that party."

5. Rule 283 framed in the year 1974 has been amended with slight modifications in the year 1994 and the new Rule 225 contained in Chapter IX has come into existence in M.P. Motor Vehicle Rules, 1994, which is also made applicable to the

State of Chhattisgarh. Rule 225 deals with Claims Tribunal which is also pertinent and quoted herein below:--

"225. Notice to opposite party and its examination.-- (1) If the application is not dismissed under Rule 224 the Claims Tribunal shall send a copy of the application and issue notice to the party or parties from whom applicant claims relief (hereinafter referred to as an opposite party) of the date on which it will consider the application and may call upon the party to produce on that date any evidence which they may wish to tender.

(2) Where the applicant makes a claim for compensation u/s 140, the Claims Tribunal shall give notice to the owner and Insurer if any, of the vehicle involved in the accident directing them to appear on the date, not later than fifteen days from the date of the issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claims application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex parte on the presumption that they have no intention to make against the award of compensation.

(3) The opposite party may on or before the first hearing or within such time as the Claims Tribunal may permit, file a written statement dealing with the claim raised in the application alongwith the document on which it relies and any such written statement and such documents shall form part of the record.

(4) No document which is not produced by the opposite party on or before the first hearing shall not without the sanction of the Claims Tribunal be recorded in evidence on behalf of the party.

(5) If the opposite party contests the claim the Claims Tribunal shall proceed to examine the parties on the claim and shall reduce the result of examination to writing."

Rules 226 and 227 are also pertinent which provide as under :--

226. Obtaining of information and documents necessary for awarding compensation u/s 140.-- The Claims Tribunal shall obtain whatever information and documents which may be found necessary from the police medical and other authorities and proceed to award the claim whether the parties who were given notice, appear or not, on the appointed date.

227. Judgment and award of compensation u/s 140.-- (1) The Claims Tribunal shall proceed to award the claim of compensations u/s 140 on the basis of:--

(a) Application and Statements of the parties;

(b) Accident Information Report in Form 54 of the Central Rules or Certificate regarding ownership and insurance particulars of the Vehicle involved in the accident, obtained from the Registering authority;

(c) First Information Report;

(d) Post-mortem Report or Death Certificate or Injury Report in Form M.P.M.V.F. 76 (Comp. B) by the Medical Officer who has examined the victim;

(e) Any other information or documents obtained by the Tribunal under Rule 226.

(2) The Claims Tribunal in passing orders shall make an award of compensation in respect of the death or permanent disablement to be paid by the insurer or owner of the vehicle involved in the accident, within a period of thirty days.

(4) The Claims Tribunal shall as far as possible, dispose of the application for compensation within forty five days from the date of receipt of such application."

6. It is pertinent to note that even after summary dismissal of the application, the claimant may file fresh claim petition, under Sub-rule (2) of Rule 281.

Rule 281 of the Rules, 1974 provides as under :--

"281. Summary dismissal of application.-- (1) The Claims Tribunal may after considering the application under Rule 296 and the statement if any of the applicant recorded under Rule 280 summarily dismissed the application on any of the following grounds, if for reasons to be recorded in writing, it is of the opinion that there are not sufficient grounds for proceeding therewith-

(i) that the application has not been made by a person competent to do so u/s 110A of the Act;

(ii) that it is not made within sixty days from the date of occurrence of the accident under Sub-section (3) of Section 110A of the Act;

(iii) that it is not duly stamped;

(iv) that it is not duly signed and verified as required by Rule 277.

(2) The rejection of application under Sub-rule (1) shall not be a bar for presentation of a fresh application with respect to the same matter."

7. Shri Agrawal, Counsel for the respondent-Insurance Company fairly submitted that he has no objection regarding restoration of even the original claim. He further submits that in certain connected matters some award were passed under no fault liability and if it would be so, the Insurance Company fairly submits that matter be remitted back to the Tribunal to consider the case u/s 140 of the Act. So far as the present case is concerned, he submits that in view of the condition of the claimant that she is physically old & infirm and illiterate and is maintaining herself by resorting to begging, the dismissed claim may be restored and the Tribunal may be directed to pass an order under no fault liability as expeditiously as possible.

8. Having thus considered the facts and circumstances of the case, material on record and in view of the discussion made above, the original claim of the

applicant is restored and the matter is remitted back to the Claims Tribunal with directions to the Tribunal to decide the claim of the applicant on merits as early as possible. It is further directed that so far as claim under no fault liability is concerned, the same shall be decided within 30 days from the date of receipt/production of certified copy of this order.

9. The report from the District Judge was called for on 13-11-2002. It is not on record. A.R. (J) to do the needful and submit the same in Chamber as it is not advisable to keep the matter pending for that purpose. The revision is allowed.

Copy of the order be sent to the District Judge and the Claims Tribunal for compliance.

C.C. as per rules.