
(1971) 04 AHC CK 0029
In the Allahabad High Court
Case No : F.A.F.O. No. 105 of 1970

Komal Charan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-04-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 110D

Citation : (1971) ACJ 320 : AIR 1971 All 503 : (1971) 41 AWR 504

Hon'ble Judges : Satish Chandra, J;A.K. Kirty, J

Bench : Division Bench

Advocate : Gopal Behari, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The appellant was in 14th April, 1967, involved in an accident with a jeep car belonging to the State Government. On 25th September, 1967, he instituted a claim petition u/s 110-A. The Motor Vehicles Act, for compensation for the injuries received by him at the accident. The respondents contested the claim on various grounds. One of the pleas was of limitation. The District Judge, Bareilly, acting as the Claims Tribunal, framed a preliminary issue on the question of limitation.

2. The prescribed period of limitation for a claim petition at the relevant time was, 60 days from the date of the accident. The appellant moved an application supported by an affidavit for condonation of the delay. The tribunal below held that the claim petition was filed admittedly beyond time and the explanation for the delay was not sufficient. It rejected the application for condoning the delay; and, consequently, it rejected the claim petition also. Aggrieved, the claimant has come to this Court in appeal.

3. Learned Standing Counsel appearing for the respondents raised a preliminary objection that no appeal lay. u/s 110, the Motor Vehicles Act, 1939, the State

Government has been authorised to constitute by a notification in the Gazette, a Motor Accidents Claims Tribunal, for adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons. An application for compensation is made u/s 110-A of the Act. Sub-section (3) thereof provides:--

"(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

A claim petition ends in an award given u/s 110-B, which says:--

"110-B. On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and 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."

4. Section 110-D provides for appeals. It says:

"110-D, Appeals.

(1) Subject to the provisions of Sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute is less than two thousand rupees."

5. Section 110-A (3) lays down the rule of limitation and confers power to condone the delay. Section 110-B provides for an enquiry "on receipt of an application for compensation made u/s 110-A". Every such application, without exception, be it within or beyond time, comes within the ambit of Section 110-B, and will have to be inquired into. The scope and extent of the enquiry will depend on the pleadings of the parties. The enquiry will cover all issues that the parties may raise. A preliminary issue like limitation will be inquired into u/s 110-B because there is no other provision for holding an inquiry into such an issue.

6. An inquiry u/s 110-B culminates in an award. The award terminates the proceedings before the Tribunal and disposes of the application for compensation.

7. The termination may come about as a result of findings on all issues including preliminary issues. It can equally happen on a finding on a preliminary issue like

limitation. The Tribunal may find that the application for compensation is barred by time and that there is no sufficient cause for con-doing the delay. The resulting order would effectively terminate the proceedings and dispose of the application for compensation. Such an order will be an "award", appealable u/s 110-D.

8. Learned Standing Counsel stated that Section 110-B speaks of the Tribunal making an award "determining the amount of compensation and specifying the person to whom compensation shall be paid....." and submitted that a decision which does not determine the amount of compensation and specify the person is not an award. In our opinion, this is too narrow a construction. Take a case where the claim has been lodged within time, but on going into the merits of the claim, the Tribunal finds that the claimant is not entitled to any compensation and dismisses the claim. In such a case, apart from other thing, no amount has been determined as compensation. So, such a decision would not be award though it records findings on the merits. So reading, Section 110-D would be emasculated of all efficacy. An appeal would lie only if the Tribunal determines some amount payable as compensation; no other order will be appealable. The appealability will depend not on the fact of a final order adjudicating the merits of the claim and terminating the proceedings, but upon the nature of the order. The right of appeal will hence accrue on the passing of the final order. Then alone it will be known if there is a right to appeal. But this is contrary to the well-settled principle that a right of appeal is a vested right and vests in a litigant on the date the lis commences. See *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . In this case the Supreme Court rejected the argument that the right of appeal accrues on the date of decision. The construction suggested by the learned standing Counsel is not sustainable.

9. It will be seen that an award is appealable on facts. If the construction advanced for the State is accepted, a finding of the Claims Tribunal on the question of sufficiency of the cause for the delay would be final and unchallengeable anywhere. No appeal would lie; and, since it is a finding on fact, no revision or a writ petition would be maintainable. Section 110-F bars a suit in the civil courts. The intention of the Legislature could never have been to confer such an uncontrolled "jurisdiction on a Tribunal of original jurisdiction.

10. In *S. Thangavelu Pillai Vs. E.M. Mani (decd) and Others*, , the Madras High Court followed its earlier decision in *G. Gopalaswami Vs. G. Navalgaria and Others*, and held that dismissal of an application to condone the delay in filing an application for compensation amounts to rejection of the application for compensation itself, and, so, it amounts to an award.

11. The case of *Balwant Singh and Another Vs. Partap Singh Jawala Singh and Others*, also supports our view. There, it was held that rejection of an application for filing an award u/s 14, Arbitration Act made by the arbitrator had the substantive effect of setting aside the award, and, as such, such an order was appealable u/s 39(i)(vi) of the Arbitration Act. An order dismissing a claim

petition as barred by time has the effect of an order refusing to grant compensation, and is, as such, an award within meaning of Section 110-D, Motor Vehicles Act.

12. The learned Standing Counsel relied upon *Miss Zarin Rustomji Munshi v. Santubhai Manibhai Patel* (AIR 1969 Guj 233). There, it was held that an order holding that the Tribunal had no jurisdiction to entertain a claim petition did not amount to an award, because, the Tribunal refused to hold an enquiry into the claim on the ground that it had no jurisdiction and, as such, the order was not one of dismissal or disposal of the claim in any manner. The case is clearly distinguishable. In the present case, the Tribunal did hold an enquiry, but rejected the claim on the ground that it was barred by time. Moreover, with due respect, we find it rather difficult to agree with the line of reasoning which appealed to the Gujarat High Court; an adjudication of the question whether the Tribunal has jurisdiction also involves an enquiry into the claim petition.

13. Learned counsel referred to *Mangat Ram v. Kamlesh* (1969 All WR (HC) 136). In that case, a learned Single Judge of this Court held that an order condoning the delay and entertaining an application was not an award so as to be appealable. In our opinion, this decision is plainly right. The learned Judge emphasised that condonation of the delay does not terminate the proceedings, and so, it cannot be said that an award has been made. No observation in that case militates against the view that an order dismissing an application for condonation of the delay, which necessarily dismisses the claim petition is an award.

14. In *Satish Chandra v. State of U. P.* (1971 All LJ 62) a learned Single Judge observed that he had grave doubts that an order refusing to condone the delay and rejecting the claim as time-barred amounted to an award on a claim. The learned Judge did not express a concluded opinion, but only his doubts. In our opinion, the doubts were misconceived.

15. The facts of the present case are that after the accident on 14th April 1967, the appellant was confined in various hospitals till 31st August 1967. Thereafter, he was taken to Pathankot in connection with handing over the charge of his office. He remained there till 11th September, 1967. He came to Delhi and consulted some orthopaedics surgeons in connection with his injuries. He remained in Delhi from 12th September to 16th September 1967. Thereafter, he went to his village Tirha, district Rampur, to meet his parents. There he remained till 21st September, 1967. Then he came to Bareilly on 22nd September 1967, to consult lawyers to take proceedings for recovery of damages on account of the injuries suffered by him at the accident.

The appellant's uncontroverted affidavit says that on 22nd September, 1967, he met Sri V.N. Mathur, a close friend of Chunni Lal, a gentleman who had also suffered injuries at the same accident in which the appellant was involved. Sri V.N. Mathur informed the appellant that Chunni Lal had engaged Sri J. N. Mathur,

Advocate, for filing a petition for damages. Thereupon, the appellant met Sri J.N. Mathur, application was drafted by Sri J.N. Mathur on 23rd and 24th September, 1967, and it was instituted before the Tribunal on 25th September, 1967.

16. The tribunal held that the appellant's affidavit showed that the appellant had no idea to file a petition. It was only by chance when he met Sri V.N. Mathur and was told about Chunni Lal having filed the petition, that the idea struck him to file the petition. This observation does not appear to be correct. According to the appellant's affidavit, he came to Bareilly for consulting lawyers with a view to take proceedings for recovery of damages. So he had an idea to take legal proceedings. On meeting Sri V.N. Mathur, he came to know that he could file a petition under the Motor Vehicles Act just as Chunni Lal had done. On coming to know of this, the appellant immediately took proceedings and promptly filed the application for compensation. There is no element of laches in the conduct of the appellant. The explanation offered by him is natural and reasonable. He was confined to hospital for a long time.

Thereafter, his desire to meet his parents was only natural. He spent a few days with his parents, before coming to Bareilly, where alone he could take appropriate proceedings. We are unable to agree with the view taken by the Tribunal that the appellant was negligent in not having taken any legal advice in respect of the question of limitation provided for filing an application for compensation under the Motor Vehicles Act. We are satisfied that the appellant was prevented by sufficient cause from making the application within time.

17. In the result, the appeal succeeds and is allowed. The impugned order is set aside. The delay in filing the application u/s 110-A. The Motor Vehicles Act, is condoned. The case is sent back to the Claims Tribunal for adjudication of the application on merits and in accordance with law. The appellant would be entitled to his costs of the appeal.