

(2000) 09 MP CK 0075
In the Madhya Pradesh High Court
Case No : M.A. No. 885 of 1999

Malti Bai and Others

APPELLANT

Vs

Ramadhar Singh and Others

RESPONDENT

Date of Decision : 30-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 25
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 2
Motor Vehicles Act, 1988 — Section 149, 166, 170, 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2002) ACJ 1623 : (2001) 2 MPJR 97

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : Sanjay Kumar Agrawal, for the Appellant; N.S. Ruprah, for the Respondent

Judgement

Arun Mishra, J.

This order shall also govern the disposal of Civil Revision No. 2057 of 1999.

The insurer and the claimants have both come to this court. The claimants have filed the instant M.A. No. 885 of 1999 and the insurer has filed Civil Revision No. 2057 of 1999 against the same award. The claimants' prayer is for enhancement. Insurer submits in the revision that claim was hopelessly barred by limitation and it ought not to have been entertained by the Claims Tribunal, hence revision be allowed and the award set aside.

Before advertng to the legal questions involved, the facts relevant for deciding the present appeal/revision be stated: One Babulal Kewat died in an accident occurred on 9.10.1990. The claim petition was preferred by the widow and three minor children of the deceased besides Janmati, his mother. Babulal was going in jeep No. MBL 7683 to Bilaspur. When the jeep reached near Nariyara turning, truck No. MBL 6130, driven by Chhotelal in a rash and negligent manner, hit the

jeep as a result of which Babulal suffered various injuries and died. Criminal case was registered against the driver for offences under Sections 279, 337 and 304A, Indian Penal Code and prosecution was launched. Babulal (26) was earning Rs. 4,000 per month. The deceased after spending Rs. 1,000 on himself used to give Rs. 3,000 per month to the claimants. Expenses were also incurred on the last rites of the deceased. Thus, a total amount of Rs. 16,57,000 was claimed.

Owner of the truck, namely, Rama-dhar Singh and driver Chhotelal remained ex parte. Insurer, namely, National Insurance Co. Ltd. in its reply contended that it was a case of contributory negligence, income of the deceased has been shown on the higher side, so also the dependency. The accident took place in the year 1990 and the claim petition was filed in 1999, hence it was barred by limitation. There was breach of conditions of insurance policy and driver was not possessing a valid licence.

The Claims Tribunal has awarded compensation of Rs. 1,17,800 but interest from the date of application till the award was not allowed and it was directed that in case the award is not satisfied within a period of one month from the date of order, the amount would carry interest at the rate of 12 per cent per annum.

The learned counsel for the insurer raised a submission that Article 137 of the Limitation Act, 1963 would be applicable and the decision of the Apex Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , is not a complete answer to the question as to limitation. His further submission is that revision is maintainable as held by this court in the case of United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, .

On the other hand, learned counsel for the appellants-claimants Mr. Sanjay Agrawal submitted that the revision is not maintainable against an award passed by the Claims Tribunal. He has placed reliance on the decision rendered by the five Judges Bench of this court in Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, . His further submission is that when appeal is specifically provided the insurer cannot resort to revision and the decision of United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , does not lay down the correct law in view of the decision of Chintaman's case (supra). It is submitted that the Claims Tribunal cannot be termed strictly a "civil court" but is a "Tribunal" hence Article 137 of the Limitation Act does not apply. The income has been assessed on the lower side and the multiplier used is also not correct, therefore, the quantum of compensation deserves to be enhanced justly in the circumstances of the case.

The points raised for consideration before us are: (i) Whether the revision is maintainable against an award passed by the Claims Tribunal? (ii) Whether the claim was barred by limitation? and (iii) Whether the compensation granted by the Tribunal deserves to be enhanced and if so, what is the just compensation payable to the claimants?

Under Section 173 of the Motor Vehicles Act, an award has been made

appealable by the legislature on certain grounds available to the parties. It cannot be allowed to be assailed by way of filing a revision or a writ petition. Taking recourse to such a method would be against the legislative mandate. The matter came up for consideration before a Full Bench of this court consisting five Judges in the case of Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, . The question was: whether against an interim award revision is maintainable? The Full Bench came to the conclusion that interim award is also an award and against an award appeal is provided u/s 173 of the Motor Vehicles Act, 1988 and the decision in Gaya Prasad and Another Vs. Suresh Kumar, , was overruled. This court in Chintaman's case (supra) held as under:

There cannot be any doubt that where an appeal lies revision cannot lie. [See: Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, and Sukhram and Another Vs. Gauri Shankar and Another, . This principle has been introduced in Section 115 of the CPC by means of Sub-section (2) incorporated by Amendment Act 110 of 1976. Sub-section (2) states that the High Court shall not under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto. Since we have held that an appeal lies, it follows that a revision does not lie.

Thus, the decision in United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , taking a contrary view with respect to maintainability of a revision or that of a writ petition cannot be said to hold the field in view of the decision of the five Judges Bench of this court which is binding. The only exception with respect to maintainability of a writ petition may be that of the case of an award obtained by playing a fraud as laid down by the Apex Court in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, . In the case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, , the Apex Court has clearly laid down that appeal on behalf of the insurer is not maintainable with respect to defences not available to it u/s 149(2) of the Motor Vehicles Act, 1988 without permission u/s 170 of the Act obtained at the earlier stage itself to urge all the defences available. That permission can be granted only on the happening of certain exigencies as mentioned u/s 170 of the Motor Vehicles Act. In Chinnama George and Others Vs. N.K. Raju and Another, , it has been laid down that joint appeal on behalf of the insurer and owner is not maintainable and the bar created by Section 149(2) against the insurer for raising the pleas cannot be lifted by joining the owner in appeal and appeal is not maintainable on behalf of the insurer on the grounds which were not available to it before the Claims Tribunal.

In the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , the Apex Court has agreed with the decision of Shankarayya 1998 ACJ 513 , that if the insurance company has not obtained the leave u/s 170 of the Act, its appeal as to quantum, negligence, etc., is not maintainable. The course is that defences available to the insurer can only be availed by it in appeal. Thus,

we are of the opinion that revision is not maintainable even on the ground of limitation urged in the revision by the insurer. No revision can be filed and the only remedy available to the insurer is that of filing an appeal, if the law permits to do so, on the grounds which are permissible to be raised therein. It cannot get rid of such bar of raising the ground by way of filing the revision or the writ petition, as the case may be.

The decision in United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , has been overruled by Full Bench decision of this court in New India Assurance Co. Ltd. Vs. Rafeeka Sultan and Others, . In para 16, the Full Bench has observed:

Having given serious consideration to the question involved in this matter, it can be said that the Claims Tribunals are constituted under a special Act, which provides for the licensing of drivers of motor vehicles, licensing of conductors of stage carriages, registration of motor vehicles, control of the transport vehicles, special provisions relating to the State Transport Undertakings; construction, equipment and maintenance of the motor vehicles; control of traffic; motor vehicles temporarily leaving or visiting India, liability without fault in certain cases, insurance of motor vehicles against third party risks; Claims Tribunal; offences, penalties and procedure and miscellaneous provisions under various Chapters. The Claims Tribunals are civil courts, since they determine civil rights and liabilities. They are not civil courts constituted under the Civil Procedure Code, 1908. It provides for appeal against order(s) and award(s) of the Claims Tribunal in certain circumstances. Where appeal is not provided, recourse to revision u/s 115 of the CPC or writ petition under Article 227 of the Constitution of India would not be justified. The right to appeal is neither an absolute right nor an ingredient of natural justice. It is a statutory right and it can be circumvented by the conditions in the grant. If a statute gives a right to appeal under certain conditions that right becomes vested and exercisable by the appellant. [See Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, It may or may not provide for further remedy against order passed in appeal. Since it has not provided for revision, legislative intent cannot be set at naught by challenging the order or award of the Claims Tribunal u/s 115 of the CPC or petition under Article 227 of the Constitution of India. Doing so would tantamount to mock at law enacted by the legislature.

The Full Bench in para 19 has held as under:

Therefore, where appeal is provided, revision u/s 115 of the CPC or petition under Article 227 of the Constitution of India is not available. In the circumstances, where insurance company cannot file appeal, it cannot file revision u/s 115 of the CPC or a petition under Article 227 of the Constitution of India.

The second question canvassed strenuously by the learned counsel Mr. Ruprah is that the claim petition is barred by limitation and no award could be passed by

the Claims Tribunal. The accident took place in the year 1990 and claim petition was filed in the year 1998. Thus, as per Article 137 of Limitation Act, 1963 it was hopelessly barred by limitation.

Section 166(3) of Motor Vehicles Act, 1988, as it stood before its appeal reads as under:

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

The effect of the repeal is that Section 166 provides for no limitation for filing a claim petition before the Claims Tribunal. The Supreme Court in the case of Dhannalal v. D.P. Vijayvargiya 1996 ACJ 1013 (SC), considered the effect of repeal of Sub-section (3) of Section 166 of the Motor Vehicles Act and held that when Sub-section (3) of Section 166 has been omitted, the Tribunal has to entertain a claim petition without taking note of the date on which such accident has taken place. Claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force. The Apex Court in para 7 has laid down as under:

(7) In this background, now it has to be examined as to what is the effect of omission of Sub-section (3) of Section 166 of the Act. From the Amending Act, it does not appear that the said Sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act to show that benefit of deletion of Sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose, an accident had taken place two years before 14.11.94, when Sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation, saying that the period of twelve months which had been prescribed when Sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section 166 with effect from 14.11.1994? According to us, the answer should be in negative.

The learned counsel for the insurer has also relied on the decision of the Apex Court in the case of The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, . In the said case, on 10.3.1972 the respondent filed a petition before the District Judge claiming an enhanced compensation of Rs. 19,367.60. The Electricity Board raised objection that the petition was barred by limitation under Article 137 of the Limitation Act, 1963. The District Judge agreed with the submission. The Apex Court in para 21 has observed:

The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the Limitation Act, 1963, indicates the object of the

Limitation Act, 1963, to include petitions original or otherwise, under special laws. The interpretation which was given to Article 181 of the Limitation Act, 1908, on the principle of ejusdem generis is not applicable with regard to Article 137 of the Limitation Act, 1963. Article 137 stands in isolation from all other Articles in Part I of the. Third Division. This court in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, , has rightly thrown a doubt on the two-Judge Bench decision of this court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , where this court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications". These petitions and applications can be under any special Act as in the present case.

The conclusion has been recorded by the Apex Court in the following words:

The conclusion we reach is that Article 137 of the Limitation Act, 1963, will apply to any petition or application filed under any Act to a civil court. With respect, we differ from the view taken by two-Judge Bench of this court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and hold that Article 137 of the Limitation Act, 1963, is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the Limitation Act, 1963.

The learned counsel has further relied upon the decision in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, , wherein an application for reference in connection with a dispute arising out of building contract was filed and Article 137 of Limitation Act was held applicable. It was further held that period of limitation has to be computed from the date claim is asserted and payment is denied.

The learned counsel has further relied upon the case of The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, , wherein the Apex Court considered the question of applicability of Article 137 to the case of reference under the Land Acquisition Act. The Deputy Commissioner failed to make the reference within 90 days from the date of application by the claimant. Application by claimant to court for direction to Deputy Commissioner to make reference within 90 days from the date of application could be filed within three years from the date of expiry of 90 days as provided under Article 137 of Limitation Act.

The learned counsel further submitted that Claims Tribunal is a civil court, hence limitation under Article 137, Limitation Act would apply. He has relied on the decision of the Apex Court in State of Haryana v. Darshana Devi 1979 ACJ 205 (SC), wherein the dispute involved was as to the payment of court-fees. The High Court has extended the pauper (indigent) provisions to the auto accident

claims on the ground that Order 33, CPC applied to the proceedings before Tribunal having trappings of the civil court which was approved by the Apex Court and the Apex Court has held that Tribunal was having a trapping of a civil court. In yet another case in Bhagwati Devi v. I.S. Goel 1983 ACJ 123 (SC), the Apex Court has held that Claims Tribunal under the Motor Vehicles Act is a civil court for the purpose of Section 25 of CPC and the power could be exercised for transferring a case on that basis.

Yet another decision relied on by the learned counsel is Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, . In para 10, the Hon"ble Apex Court has observed:

The provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

Article 137 cannot apply to claim petitions filed u/s 166 of Motor Vehicles Act, 1988. We are fortified in this view by the decision of the Apex Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , which is directly on claim petitions filed u/s 166 wherein it has been clearly laid down as under:

When Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force.

Coming to the question of quantum of compensation, the finding which has been recorded by the Tribunal about the income of Rs. 780 per month is based on assumption and the consequential dependency of Rs. 460 per month assessed by the Tribunal is incorrect. There is positive evidence that deceased was doing the business of fisheries and though the income has been claimed to be Rs. 4,000 per month and the same may be exaggerated, the deceased was a labourer and his income per day could not be less than Rs. 50, hence it has to be taken to be Rs. 1,500 per month. Based thereon, deducting 1/3rd which the deceased would have spent on himself, the dependency comes to Rs. 1,000 per month, i.e., Rs. 12,000 per year. The proper multiplier applicable at the age of 25 years is that of 18. Thus the total amount comes to Rs. 1,000 x 12 x 18 = Rs. 2,16,000. The widow of the deceased, appellant No. 1, is also entitled to consortium of Rs.

5,000. The claimants are also entitled to funeral expenses of Rs. 2,000 and conventional amount for loss of expectancy of life in the sum of Rs. 10,000 and a further sum of Rs. 2,500 on account of loss to estate. Thus the total amount of compensation comes to Rs. 2,35,500.

In the result, the appeal filed by the appellants is allowed in part. The appellants are entitled to compensation of Rs. 2,35,500 together with interest at the rate of 12 per cent per annum from the date of application before the Claims Tribunal. The revision filed by the insurer is held to be not maintainable and the claim petition filed is held to be not barred by limitation. Costs of the present appeal and revision shall be borne by the parties as incurred.