
(1970) 10 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4336 of 1968

Mangat Ram

APPELLANT

Vs

Motor Accidents Claims Tribunal and Others

RESPONDENT

Date of Decision : 14-10-1970

Acts Referred:

Limitation Act, 1963 — Section 5

Motor Vehicles Act, 1988 — Section 110, 110(1), 110A, 110F

Citation : (1971) ACJ 85

Hon'ble Judges : C.D. Parekh, J

Bench : Single Bench

Advocate : N. Lal, for the Appellant; A. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been directed against the order of the Motor Accidents Claims Tribunal, Annexure A to the writ petition.

2. The facts of the case are very simple. The Petitioner is the owner of a motor truck insured by opposite party No. 6. On 26th of October, 1966, this motor truck was being driven on Delhi Meerut route by the driver when an accident occurred and one Kishun Lal sustained injuries. Kishun Lal died the next day on account of the injuries sustained by him. The heirs of Kishun Lal Respondents Nos. 2 to 5 thereafter filed a civil suit claiming compensation of Rs. 45,000/- in forma pauperis. The suit was filed on 5th of January, 1967, and the application in forma pauperis filed along with the suit was disposed of on 25th of April 1967. The application was rejected. The Respondent, as it appears did not pay the court fee which was the necessary consequence of the rejection of the application in form a pauperis. For that reason, it is stated, the suit could not proceed further.

3. In March, 1967 a Claims Tribunal for the area to determine the claims arising under the Motor Vehicles Act was constituted and before this Tribunal on 20th November, 1967, opposite parties Nos. 2 to 5 preferred their claim by way of

application to it. Along with the application the opposite parties also filed an application u/s 5 of the Indian Limitation Act, for condoning the delay in filing the application. The Tribunal condoned the delay and admitted the application for hearing. The Petitioner thereafter appears to have challenged the order of the Tribunal by way of appeal in this Court which appeal was dismissed on 13-1 [-1968 by Hon''ble Mr. Justice S.N. Dwivedi holding that the appeal was not competent. Thereafter the Petitioner has preferred this writ petition against the order of the Tribunal. This pstition was filed on December 11, 1968.

4. The only question that has been urged on behalf of the Petitioner is that the Tribunal had no jurisdiction in the matter and the Tribunal was in error in holding that it could entertain the claim in the instant case. To appreciate the point it is necessary to reproduce Sections 110(1) and 110A(2) and (3) and Section 110-F which are as follows:

110-(1). A State Govt, may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons, arising out of the use of motor vehicles.

110-A(2). Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

110-A(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.

110-F. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

5. The argument of the learned Counsel for the Petitioner is that Section 110F of the Act which was introduced by the amendment of 1956 does not affect the right to file a suit in respect of a cause of action which had accrued before the constitution of the Accidents Claims Tribunal. The civil court has jurisdiction to entertain such a claim for compensation even after the constitution of the Tribunal, in respect of an accident occurring before its constitution. He has placed reliance on a case *Sushma Mehta v. C.P. Transport Services Ltd.* AIR 1964 MP. 163 He has also placed reliance on another case *Mulak Raj Bhola Shah Vs. Northern India Goods Transport Corporation Ltd. and Others*, One more case has

been referred to by the learned Counsel for the Petitioner which is Manibai and Another Vs. Raj Kumar Harpal Deo and Another, . The law laid down in these three cases as it appears is that for a claim which has arisen prior to the constitution of the Tribunal should be filed before the civil court and the Civil Court is the only forum in which a person can pursue his remedy for his claim. In the aforesaid three cases in my opinion the point involved in this case has not been discussed nor those three cases can be authority for the proposition. To reiterate the facts once again the accident in the present case occurred on 27-10-1966, in which Kishun Lal lost his life. The heirs of Kishun Lal filed a civil suit for compensation along with an application in forma pauperis. That application having been dismissed they did not proceed further with that suit and they filed the present application afresh after the constitution of the Tribunal although in the instant case the Tribunal was constituted after the cause of action arose in favour of the opposite parties Nos. 2 to 5. The only ground for the challenge of the jurisdiction of the Tribunal, therefore, is that it could not entertain and decide an application because it had not been constituted when the accident took place. It is an admitted fact in the case that the Tribunal had been constituted for the area on the date on which the application was filed along with an application for condonation of delay. We have, therefore, to see whether on that date such an application could be filed before the Tribunal or not and whether the jurisdiction of the civil court was barred on that date or not. In Qabul and Others Vs. Emperor Sulaiman A.C.J. as he then was, held that a right of action is something different from the choice of the forum. There may be a vested right of action when the cause of action has accrued before the old Act has been altered but there can be no vested right in the choice of a particular forum. If the legislature has thought fit to deprive the civil court of its jurisdiction to entertain suit of a particular nature a Plaintiff cannot compel the civil court to hear his suit merely because his cause of action had accrued before the new Act depriving the civil court of its jurisdiction was passed. The choice of forum is a matter of procedure and not a substantive right and in most cases a new Act will have a retrospective effect so far as the choice of forum is concerned. In my opinion, therefore, a person has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which he sues and if an act alters that mode of procedure he has no other right than to proceed according to the altered mode. Right to recover property or claim damages is a question of substantive law and the protection of such rights is amongst the commands of the administration of justice but in what courts and within what time the right be agitated are questions of procedural law for they relate merely to the mode in which the courts fulfil their function. Thus there is good deal of support for the view expressed in Hajari Tewari's case that a right of action is something different from the choice of forum.] There is certainly a vested right of action when cause of action has accrued. The only result, therefore, after the constitution of the Tribunal u/s 110 of the Motor Vehicles Act is that application can be made to it and not to the civil courts the jurisdiction of which to take cognizance of such claim as by express words contained in Section 110F has

been barred. On the date on which the present application was filed in my opinion, in view of the provisions contained in Section 110F the jurisdiction of the civil court was barred from entertaining such an application relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal in the area. Thus no rights of the Petitioner are affected. It is only the remedy which has been changed in enforcing the right of the heirs of the deceased and that remedy can be enforced by making application to the Claims Tribunal. The point has well been discussed in a ruling Unique Motor and General Insurance Co. Ltd. Vs. Kartar Singh and Another, . I am in respectful agreement with the law as interpreted in that case. In my opinion the Tribunal was the only forum where the Respondents Nos. 2 to 5 could agitate their claim on the date on which they sought the remedy and the civil court had no jurisdiction to entertain the suit for such a claim. The jurisdiction of the Civil Court was specifically barred u/s 110F. It is another matter that a Tribunal after condoning the delay entertained the application. Whether the delay was sufficiently explained or not was well within the discretion of the Tribunal and if the Tribunal exercised discretion in favour of the Respondents and held that there was sufficient cause for them for not having preferred the claim earlier, cannot be interfered with.

6. In the result the writ petition fails and is dismissed. I make no order as to costs.