
(1987) 11 MP CK 0047

In the Madhya Pradesh High Court

Case No : M.A. No"s. 247 and 263 of 1977

Mehta and Company

APPELLANT

Vs

Raghunandan Singh and Others

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6
Criminal Procedure Code, 1973 (CrPC) — Section 195
Limitation Act, 1963 — Article 137, 2, 5, 6
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 297
Motor Vehicles Act, 1988 — Section 110, 110A, 110C

Citation : (1989) ACJ 1156

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : B.K. Samadani, for the Appellant; M.L. Dhupar, G.M. Chafekar and Dandwate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Verma, J.—This order shall also govern the disposal of Misc. Appeal No. 247 of 1977--National Insurance Company Ltd. v. Raghunandan Singh.

2. This is an appeal by the owner of petrol tanker bearing registration No. MPF 6504 against the award dated 16.8.1977 passed by the Motor Accidents Claims Tribunal, Ratlam in Claim Case No. 9 of 1971 whereby the learned Tribunal has awarded a total compensation of Rs. 77,170/- with interest to the claimant-injured Raghunandan Singh, Respondent No. 1, against the Appellant and Respondent Nos. 2 to 6 who are the legal representatives of the driver Chironjilal and the insurance company which had insured the Appellant in respect of the petrol tanker aforesaid.

3. The material facts giving rise to this appeal, briefly stated, are as follows:

On 19.11.1970 at about 3.40 p.m. the claimant-injured Raghunandan Singh, a

Sub-Inspector of Police, was going on a motor cycle with constable Rajnarain Singh who was sitting behind him on the pillion and while he was driving on the road, in front of Kothari Garden in Ratlam, a petrol tanker bearing registration No. MPF 6504 coming with high speed, dashed against the motor cycle resulting in serious injuries to claimant as well as to the pillion rider. The claimant sustained fractures in the tibia and fibula bones of his right leg and had to undergo surgical operation, bone grafting and a long treatment by Orthopaedicians and ultimately suffered a permanent disability.

4. On a claim petition having been filed by the claimant-injured on 15.6.1971, the learned Tribunal on appreciation of evidence adduced in the case, found that the driver of the petrol tanker was rash and negligent in driving the tanker as a result of which the accident occurred and the claimant sustained injuries and permanent disability. As regards compensation, the learned Tribunal awarded Rs. 77,170/- as total compensation together with interest thereon, against the driver, the owner and the insurer. Being aggrieved by the award, the Appellant-owner of the petrol tanker has filed the instant appeal. The other appeal, viz., MA No. 247 of 1977, has been filed by the insurer. The claimant, however, has filed cross-objection claiming enhancement of the amount of compensation.

5. In this appeal, the Appellant has mainly raised the question of limitation. It has been submitted that the claim petition had been dismissed in default of appearance of the claimant and his counsel on 3.2.1972 and it was after a period exceeding three years that the application for restoration of claim petition (M.J.C. No. 18 of 1975) was moved and was allowed ex parte without notice to the present Appellant and the other non-Applicants and consequently the claim case was ordered to be restored to file on 4.9.1975. Thereafter, the notices of the claim petition were issued to the non-Applicants to file written statements. The contention is that the application for restoration was barred by time and therefore restoration of the claim petition ex parte without notice to the other side was without jurisdiction and illegal. The Learned Counsel for the Respondent-claimants has, on the other hand, submitted that there is no limitation of time prescribed for filing an application for restoring the claim petition which could be filed at any time and that restoration could be ordered ex parte without notice to the other side. The argument of the Learned Counsel, therefore, boils down to this that even though limitation of six months was prescribed for presenting claim petition initially, but if the same is dismissed in default of appearance, the petition could be restored even after a number of years.

6. In the instant case, the claim petition was filed on 15.6.1971 beyond the period of limitation of six months from the date of accident which took place on 19.11.1970 and after it was registered, the claimant sought to amend the claim petition and for that purpose had been taking time until 22.12.1971 when time was granted as a last chance and the case was fixed for 3.2.1972. On 3.2.1972, the counsel for the claimant pleaded no instructions. As such, the claim was dismissed in default of appearance of the claimant. The proceedings dated

3.2.1972 read as under:

3.2.1972: Applicant by Mr. Kothari.

Mr. Kothari pleads no instructions.

The claim is dismissed in default of appearance of Applicant

Sd/- 3.2.1972"

It is not disputed that after a lapse of more than three years, an application for restoring the claim petition was made apparently under Order 9, Rule 4 of the CPC and registered as M.J.C. No. 18 of 1975, which was allowed without notice to the other side and the claim petition was restored to its original number. The proceeding dated 4.9.1975 reads as under:

4.9.1975: Applicant with Mr. B.N. Kothari, Advocate. As per order passed in M.J.C. No. 18 of 1975 the case is restored to its original number. Fixing 19.9.1975 for filing amendment application and arguments on the question of limitation.

Sd/- C.T.

7. The contention of the Learned Counsel for the Appellant is that the Claims Tribunal is a civil court and therefore, Article 137 of the Limitation Act, 1963 would govern the application for restoring the claim petition to file under Order 9, Rule 4 of the Code of Civil Procedure, which having been made beyond a period of three years reckoned from the date of dismissal of the claim petition in default of appearance of the Appellant on 3.2.1972, was barred by time and as such, the Appellant was entitled to be noticed and heard on the application for restoration of the claim petition before it could be decided on merits. The order dated 4.9.1975 restoring the claim petition to its original number without an opportunity of hearing being afforded to the Appellant was without jurisdiction and illegal in the circumstances.

8. The Learned Counsel for the Respondents has, on the contrary, contended that the Claims Tribunal was not a civil court and the provision of limitation under Article 137 of the Limitation Act is not applicable to the application for restoring the claim petition to the file of the Tribunal.

9. To resolve the controversy as to the applicability of Article 137 of the Limitation Act, the crucial point to be decided is whether the Claims Tribunal is a civil court. It would be pertinent to advert to the nature of the dispute triable by the Claims Tribunal and the procedure followed by it. A claim petition u/s 110A of the Motor Vehicles Act is a petition for compensation arising out of a motor accident, which for all material purposes is like a plaint pertaining to the dispute ordinarily triable in civil courts. The procedure of Claims Tribunal is provided in Section 110C of the Motor Vehicles Act. The relevant portion of Section 110C may be reproduced hereunder:

110-C. Procedure and powers of Claims Tribunal?(1) XXX XXX XXX

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

XXX XXX XXX

Rule 297 of M.P. Motor Vehicles Rules, 1974 provides for application of certain provisions of the CPC including the whole of Order 9. The relevant Rule 297 may usefully be reproduced as under:

297. Application of certain provisions of Code of Civil Procedure, 1908.--Save as otherwise expressly provided in the Act or these Rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), namely, those contained in Order V, Rules 9 to 13 and 15 to 20; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto:

Provided that--

(a) for the purpose of facilitating the application of the said provisions the Claims Tribunal may construe them with such alterations not affecting the substance as may be necessary or proper to adopt them to the matter before it;

(b) the Claims Tribunal may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if it is satisfied that the interests of the parties shall not thereby be prejudiced.

Two Full Bench decisions of this Court have been cited before us having bearing on the question whether or not the Claims Tribunal constituted u/s 110 of the Motor Vehicles Act is a civil court. These are the decisions in Mangilal v. Union of India 1973 ACJ 352 (MP) and Yeshwant Rao Shrawanji v. Sampat Tukaram 1979 ACJ 244 (MP). In Mangilal's case (supra), it has been clearly laid down that the Claims Tribunal is a civil court. The relevant observations on the question are as under:

Hence, it was held that the word "suit" as contemplated under the provisions of the Limitation Act has a wider meaning than the one which can be attributed to "suit" under the Code of Civil Procedure. In this view of the matter, it was held that Section 6 of the Limitation Act was applicable to the proceedings before the Claims Tribunal which were initiated by a suit as contemplated u/s 2 of the Limitation Act, if not under the Code of Civil Procedure. On similar considerations, in another case, Section 5 of the Limitation Act was applied to the proceedings before the Claims Tribunal. It must, therefore, be held that the

Claims Tribunal is a "civil court".

Yeshwant Rao's case (supra) is, however, not a case relating to Claims Tribunal. In this case, it was held that the Commissioner appointed under the Workmen's Compensation Act is a Tribunal and not a court within the meaning of the word "court" as used in Section 115, CPC wherein it is used in narrow sense meaning a civil court in the normal hierarchy of courts.

10. It has been held in the case of The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , that Article 137 of the Limitation Act will apply to any petition or application filed under any Act to a civil court.

11. It is, therefore, contended on behalf of the Appellant that Article 137 would be applicable to the application for restoration of the claim petition filed under Order 9, Rule 4 of the CPC before the Claims Tribunal which has been held to be a civil court as per the decision in Mangilal's case, 1973 ACJ 352 (MP).

12. Having heard the Learned Counsel, we have come to the conclusion that Article 137 of the Limitation Act would be applicable to the application filed by the claimant for restoration of the claim petition under Order 9, Rule 4 of the CPC and accordingly such an application should have been filed within a period of three years from the date of dismissal of the claim petition. In the instant case, the application was moved beyond a period of three years, as already stated hereinabove and therefore, the application was barred by time and in such a situation a right had accrued in favour of other side, viz, the Appellant who should have been noticed and heard before deciding that application. The ex parte order passed by the learned Tribunal whereby the claim petition was restored to file, vide order sheet dated 4.9.1975, referred to above, without notice to the Appellant is, therefore, without jurisdiction and cannot be sustained in law, as is the contention of the Learned Counsel for the Appellant. In our opinion, the contention of the Learned Counsel must be upheld. The order restoring the claim petition to file as a result of allowing the application for restoration (M.J.C. No. 18 of 1975; vide order sheet dated 4.9.1975) is hereby set aside. The application for restoring the claim petition shall be decided afresh after notice to the other side and that apart from considering the question of sufficient cause for non-appearance under Order 9, Rule 4 of the Code of Civil Procedure, the question of sufficient cause explaining the delay in filing the application for restoration shall also be considered by the learned Tribunal. In view of the fact that we are taking the view that Article 137 applies to an application for restoration of the claim petition under Order 9, Rule 4 of the CPC and no direct authority on this question has been placed before us on the point, the claimant shall have the liberty to file an application u/s 5 of the Limitation Act showing cause for the delay in presenting the application for restoration of the claim petition beyond a period of three years as prescribed under Article 137.

13. Learned Counsel for the parties agree that the evidence on record in this case shall be treated as evidence on merits and that the parties will have the

opportunity of adducing further evidence, if any, in the case in the event of the application for restoration being allowed.

14. In the result, this appeal succeeds and is hereby allowed. The cross-objection filed in this appeal by the Respondent No. 1 is dismissed. The award of the learned Tribunal is set aside. The order passed in M.J.C. No. 18 of 1975 restoring the claim petition to its original number (vide order sheet dated 4.9.1975) is also set aside. The case is remanded to the learned Tribunal to decide the claimant's application for restoration of the claim petition (M.J.C. No. 18 of 1975) afresh after notice to the other side and to proceed in accordance with law subject to the observations made hereinabove.

15. As a result of allowing this appeal Misc. Appeal No. 247 of 1977 is also allowed. There shall, however, be no order as to costs in these two appeals.

16. Parties are directed to remain present before the learned Tribunal on 14.12.1987.