

(1987) 05 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 9050 of 1986

Mohandas

APPELLANT

Vs

Motor Accidents Claims Tribunal

RESPONDENT

Date of Decision : 25-05-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 15, Order 18 Rule 5
Criminal Procedure Code, 1973 (CrPC) — Section 326
Kerala Motor Accidents Claim Tribunal Rules, 1977 — Rule 16, 21
Motor Vehicles Act, 1988 — Section 110A, 110B, 110C

Citation : (1987) 05 KL CK 0006

Hon'ble Judges : Viswanatha Iyer, J

Bench : Single Bench

Advocate : V.P. Mohankumar, for the Appellant; P.K. Balasubramonyam, M.P. Abdulla and P. Peethambaran, for the Respondent

Final Decision : Allowed

Judgement

Viswanatha Iyer, J.—Petitioner has filed an application M.A.C. No. 256 of 1985 before the 1st Respondent u/s 110-A of the Motor Vehicles Act for award of compensation in respect of an accident which occurred on 5.12.1984. The matter came up for trial after framing of issues. Examination of witnesses started on 2.6.1986 and the oral evidence on the side of the Petitioner was closed on 26.6.1986. Altogether eight persons (including the Petitioner) were examined on his side, of which five, namely, PWs 1 to 5, were medical men. The other three were the Petitioner, his wife and an attendant.

2. The case stood posted to 30.6.1986 for the Respondents' evidence, but they had no evidence to adduce and the Tribunal posted the case for arguments to 3.7.1986. Subsequently and on application, further documentary evidence was received and matter was posted for arguments on some days between 14th and 21st July, 1986. At this stage, the then Presiding Officer of the Tribunal was transferred and the present Presiding Officer took charge. The present incumbent in office heard the arguments on various days between July 29 and August 26,

1986, after which he posted the case for award on September 6, 1986. The award was not however, pronounced on that day. The case was adjourned to September 12 and again to September 27, 1986. On that day, instead of passing the award, the Tribunal passed an order Exh. PI in these terms:

This is an application filed u/s 110-A of Motor Vehicles Act.

Since the witnesses were examined by my predecessor in office, I am proposing to try the case again. Therefore, the case is posted for evidence on 6-10.

It is this order that is challenged by the Petitioner on various grounds.

3. Section 110-C of the Motor Vehicles Act ("the Act") delineates the procedure to be followed by the Tribunal in holding the enquiry u/s 110-B on an application filed u/s 110-A for compensation. The Tribunal may follow such summary procedure as it thinks fit, subject to any rules that may be made in this behalf. The Kerala Motor Accidents Claims Tribunal Rules, 1977, deal with this aspect of the matter. Rules 16 and 21 are relevant in the context of this case. Rule 16 provides that the Tribunal shall make a brief memorandum of the substance of the evidence of each witness, that it shall be written and signed by the members of the Tribunal and that it shall form part of the record. The proviso to the rule stipulates that the evidence of medical witnesses shall as far as possible be taken down word by word. Rule 21 attracts certain provisions of the Code of Civil Procedure, 1908 to the proceedings before the Tribunal. Order XVIII is not one of those provisions made applicable to these proceedings. It is apparently because of this that the Tribunal has chosen to pass the order Exh. PI proposing to try the case again.

4. The CPC contains an express provision (Order XVIII, Rule 15) enabling a successor in office to deal with the evidence or memorandum recorded by the predecessor, as if such evidence or memorandum had been taken down or made by him and to proceed with the suit from the stage at which his predecessor had left it. Section 326 is the analogous provision in the Code of Criminal Procedure, 1973.

5. The procedure to be followed by the Tribunal is summary in nature. This finds reflection in Rules 16 and 21 as well. When only a brief memorandum of the substance of the evidence is to be made, the successor in office may find it difficult to decide the case with the help of the memorandum on record, which may be inadequate or incomplete in material particulars. The nature of the memorandum--when the evidence is not required to be recorded as envisaged by Order XVII, Rule 5--must necessarily vary from Tribunal to Tribunal. Though the rule is clear that the substance of the evidence must go into the memorandum, such eventualities cannot altogether be ruled out. In such cases, it may become necessary for the Tribunal to try the case over again or examine such of those witnesses as are found necessary to enable it to pass a proper award. There is, however, no obligation to examine all the witnesses over again, despite the fact that Order XVIII, Rule 15 does not apply to proceedings before the Tribunal. The

rule that "the one who decides must hear" the case is an aspect of the rule of natural justice, but it cannot be taken to be a universal rule applicable to all cases and to all situations. Its applicability will depend on the provisions of the statute, the constitution of the Tribunal in question, the circumstances of the case and various other factors. As observed by the High Court of Andhra Pradesh in *Harikrishan Singh v. Narayan* 1971 (1) Andhra Law Times 29:

It is common knowledge that there are many situations where it is impracticable or inconvenient or sometimes even impossible for the deciding body to hear the evidence, for instance, the witnesses may not be in a position to appear before the Presiding Officer to give evidence either because of the distance from the place of trial or because of other causes like illness, or the witness being *pardanashin* and so on and in such cases the witnesses may have to be examined on commission. In such a case the presiding officer cannot hear or see the witness but has to proceed only on the record of evidence before him. It is also difficult to apply this principle strictly to a number of proceedings before Administrative or quasi-judicial tribunals where they have to rely upon the subordinate officers usually called enquiry officers for hearing the evidence and submitting a report on the basis of which the tribunals act. Innumerable cases of that type have come to the notice of the highest court of this country, the Supreme Court and it has never been contended or held that the principles of natural justice are violated because the tribunals who ultimately decide did not actually hear the witnesses. Considering the great volume and complexity of the work entrusted to such tribunals or authorities under modern conditions, it is impossible to expect them in every case to hear the witnesses themselves without entrusting it to subordinate officers or bodies.

In that case the Andhra Pradesh High Court was concerned with the question whether a Rent Controller to whose file an application was transferred could act on the evidence recorded by the Rent Controller from whose file the petition was transferred or whether he should conduct the enquiry *de novo*. The Division Bench of the court constituted of Gopal Rao Ekbote and Kuppuswamy, JJ. held that the proceedings could be continued on the basis of evidence already recorded before the transfer and that a *de novo* enquiry was not contemplated. See also *B.N. Chobe Vs. A. Chaffar Khan*, .

6. The provisions of Order XVIII, Rule 15, CPC and Section 326 of the Code of Criminal Procedure, 1973 are pointers that so far as the courts *strictu sensu* are concerned, it has not been considered necessary to have a *de novo* trial where the presiding officer dies or becomes incapacitated or is transferred pending a trial. For that matter, so far as this State is concerned and so far as I am aware, a *de novo* enquiry was never deemed necessary in such circumstances in proceedings under the Kerala Buildings (Lease and Rent Control) Act, or the Land Reforms Act. In fact in the Rules in question there is no rule which obliges the successor Tribunal to conduct a *de novo* enquiry, or directing that he cannot continue the enquiry from the stage at which it was left by the predecessor.

7. This does not appear to be a case where the memorandum of evidence made is not sufficient to enable the first Respondent Tribunal to deal with the case. Exh. PI does not say so. The parties also did not have any such case before me. On the other hand, they proceeded on the basis that it was possible to render a proper award on the memorandum of evidence as made by the predecessor in office. No objection was raised by either side to the continuance of the proceedings from the stage reached before the predecessor or that the evidence should be recorded afresh. In fact five of the witnesses were medical witnesses whose evidence had to be taken down word by word. The same was the case with the evidence of the Petitioner as he was examined on commission. Regarding the other two witnesses there is no case that the memorandum relating to their evidence was not sufficient for a proper decision of the case.

8. Even assuming that a de novo enquiry was contemplated in law, it was open to the parties to agree to treat the evidence already recorded, as evidence in the further proceedings before the successor Tribunal. Dalim Kumar Sain and Others Vs. Smt. Nandarani Dassi and Another, By proceeding with the case on the evidence on record, without demur, the parties herein must be taken to have so consented to treat the evidence previously recorded as that recorded before the successor so that a fresh trial and recording of the evidence was quite uncalled for.

9. Exh. PI proceeds only on the basis that since the witnesses were examined before the predecessor, the case will be tried afresh. There is no basis for this premise. It is unsustainable. Exh. PI is accordingly quashed. The first Respondent Tribunal is directed to hear and dispose of the matter on the evidence on record and on such further evidence as the parties may be permitted to adduce, or the Tribunal may deem necessary, within a period of three months from today.

10. Before parting with the case, I would like to point out that it is better to have the evidence before such Tribunals recorded in full, instead of limiting it to a brief memorandum of the substance thereof. This is necessary to obviate the difficulty that may be faced by a successor Tribunal in acting upon the memorandum of evidence, as pointed out earlier. Moreover, substantial amounts are involved in such claims and the awards are appealable to this Court on fact and law. Proper appreciation of the evidence will be facilitated only with the entire evidence being on record.

11. The travails and expenses of a de novo enquiry will fall on and have to be borne (at least in the first instance) by the hapless victim of the accident. It is, therefore, advisable to have a provision like Order XVIII, Rule 15, CPC in the Rules to avoid contingencies of the nature posed by Exh. PI.

The Original Petition is allowed. No costs.

Send a copy of this judgment to the Chief Secretary to Government for such action as is deemed necessary.

Issue carbon copy of this judgment on usual terms.