
(1988) 06 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 2432 of 1986

Mrs. Stella and another

APPELLANT

Vs

M. A. C. T. and Others

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 2, Order 17 Rule 2, Order 9 Rule 1,
Order 9 Rule 13, Order 9 Rule 9
Constitution of India, 1950 — Article 226

Citation : (1988) 2 KLJ 48

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : S. Narayanan Poti, for the Appellant; Joseph Kattikkaran,
Government pleader and V.V. Surendran, for the Respondent

Final Decision : Allowed

Judgement

Chettur Sankaran Nair J.

1. This is a petition under Article 226 of the Constitution to quash Ext. P5 order, declining jurisdiction to set aside Ext. P2 award, made under the Motor Vehicles Act. An application was filed by the legal heirs of one deceased Thomas on 28-5-1981 before the Motor Accidents Claims Tribunal, Ernakulam. That was dismissed on 2-3-1984, for default of applicants. Later, it was restored on 17-7-1984 and eventually, the award (Ext. P2) was made on 28-6-1985, holding petitioners liable to pay compensation. According to petitioners their counsel left the bar and they had no knowledge of this or of subsequent proceedings. Hence an application under Order 9 rule 13 C. P. C. was made to set aside the ex parte award.

2. Rule 21 of the Kerala Motor Accidents Claims Tribunal Rules, 1977 (hereinafter referred to as the Rules) makes certain provisions of the Code of Civil Procedure, applicable to proceedings before the Tribunal. All the provisions of Order 9 are made applicable. But, provisions of Order 17 are not applicable. Since all the

rules under order 9 are applicable, Order 9 rule 13 also would apply, and award should have been set aside, according to counsel. The Tribunal took the view that the award was on merits, and therefore that Order 9 rule 13 would not apply. Apparently, this view was based on the assumption that the adjudication was under the Explanation to Order 17 rule 2. Order 17 is not applicable, and therefore the question of passing an award/decreed on merits under Order 17 does not arise.

3. Counsel for petitioners submits that, even if Order 17 does not apply, the provisions of Order 9 rule 13 would apply, relying on the decision in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, I do not think that the decision supports the contention. On the contrary, the view taken is that, provisions of Order 9 apply only to first hearings". Of course, by reason of provisions of Order 17, proceedings at an "adjourned hearing" also get transposed back to Order 9, except where proceedings are under Explanation to rule 2. But, without the modalities of Order 17, Order 9 should be confined to "first hearings". It is observed in paragraph 14 of the aforesaid decision that:

Order 9 rule 1 (a) is confined to the first hearing and does not per se apply to subsequent hearings.

Again, in paragraph 27, it is stated that:

First hearing is either for settlement of issues or for final hearing.....If it is for final hearing an, ex parte decree can be passed, and if it is passed, then Order 9 rule 13 comes into play.

4. It is thus clear that Order 9 deals only with "first hearings". It is only where an ex parte decree is passed at the first hearing, that Order 9 rule 13 applies per se.

"Adjourned hearings" are comprehended by Order 17. The observation of the Supreme Court in the decision cited in paragraph 29 is to this effect-It is stated:

"We turn next to "adjourned hearing". That is dealt with in Order 17".

The position thus is that, Order 9 per se applies only to first hearings where even a final decree could be passed. Order 9 applies to adjourned hearings comprehended by Order 17, only when Order 17 enables the invocation of Order 9. In the instant case, Order 17 does not apply, as it has not been made applicable to proceedings under the Motor Vehicles Act. The order was passed at an "adjourned hearing" and not at "first hearing" to which Order 9 applies. To the same effect are the observation of Mulla-Code of Civil Procedure volume - II (Fourteenth Edition), page - 1245:

"Provisions of Order 9 by themselves do not apply to a case in which the plaintiff or defendant has already appeared, but failed to appear at an adjourned hearing of the suit. For such a case, the procedure is laid down in Order 17 which deals with adjournments".

In an adjourned hearing, it is the modalities of Order 17 that project the case back to Order 9.

5. Counsel for petitioners referred to the decision of this court in *Haridas v. Madavi Amma* (1987 (2) K.L.T 701) to contend that in any case in which a decree was passed *ex parte*, recourse could be taken to Order 9 rule 13. I do not understand the decision as laying down that to an adjourned hearing, Order 9 would apply, unless the conditions contemplated by Order 17 are satisfied. The consideration was limited to a case arising strictly under Order 9. Contention of petitioners that Order 9 rule 13 would apply, must fail.

6. But, that is not the end of the matter. Counsel then contended that, even in the absence of a provision in the Procedural Laws, inherent powers are available to the Tribunal to do justice to the parties. There is force in this submission. As observed by Lord Buckmaster in *T. B. Barret v. African Products Limited* (AIR 1928 PC 261):

No forms or procedure should ever be permitted to exclude the presentation of a litigant's defence.

Even in the absence of a provision in procedural laws, power inheres in every Tribunal, of a judicial or quasi-judicial character to adopt modalities necessary to achieve requirements of natural justice and fair play. Procedure is grounded on principles of natural justice. It has been a cherished principle, at least in all English speaking countries that a hearing, is a prelude to fair determination. Ever since the Bible, the principle of fair hearing has influenced thinking, and governed adjudicatory process. This concept has gained, significance and shades, with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the Magna Carta". The classic exposition of Sir Edward Coke, of natural justice requires to:

"Vocate, interrogate and adjudicate". Later, in *Bentley's* case, the principle received further affirmation, when it was stated that the Laws of God and man give the party an opportunity of making his defence". In the celebrated case of *Cooper v. Wandsworth. Board of Works* (1863 (143) E.R. 414), the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou" has thou not eaten of the tree whereof I commanded thee that "thou should not eat".

Since then, the principle has been chiseled, honed and refined, enriching its content. A more recent statement of the Law in *Mulloch v. Aberdeen* (1971 (2) All England Report (1278) is that:

"the right of a man to be heard in his defence, is the most elementary protection".

Judicial treatment has added light and luminosity to the concept, like polishing to

a diamond. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental.

7. The requirement of hearing, is an attribute of natural justice: Inherent power must be exercised to attain this requirement, even when a specific provision, is not made in the rules of procedure. Inherent power, in Tribunals has been recognised.

In Dhani Devi Vs. Sant Bihari and Others, the Supreme Court found power, even in the absence of a specific provision, in the Regional Transport Authority to devise reasonable procedure. Likewise, in Cheru Ouseph v. Kunhipathumma (1981 KLT 495) and in Deputy Commissioner v. Sarojini (1981 KLT 179), this court found inherent power in statutory Tribunals, to do justice to the parties before it. Again, in Abdulla v. Rent-Controller (1984 KLT 865), this court recognised such powers in a Tribunal. The Tribunal should have exercised its inherent powers, and considered whether the absence of petitioners was justified, when it was brought to its notice that the petitioners suffered an award due to fortuitous circumstances, and not for any fault of theirs. In this view, Ext. P5 order is set aside, and first respondent is directed to consider the matter afresh, after affording an opportunity to the parties to put - forward their cases, and to proceed further in the matter in accordance with law.

Writ Petition is allowed, but there will be no order as to costs. I express appreciation of the help rendered by Shri E. Subramanian, Advocate as amicus-curiae.