
(1995) 11 AHC CK 0008
In the Allahabad High Court

Nanhi Bai and Others

APPELLANT

Vs

Motor Accident Claims Tribunal and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 110A

Citation : (1997) 2 ACC 193

Hon'ble Judges : N.B. Asthana, J;D.S. Sinha, J

Bench : Division Bench

Judgement

D.S. Sinha, J.—Heard Mr. S.K. Shukla, the learned Counsel appearing for the petitioners and Mr. J.N. Verma, learned Standing Counsel representing Motor Accident Claims Tribunal, Banda, the respondent No. 1. Nobody has appeared for the remaining respondents.

2. Before the respondent No. 1 the petitioners filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939, (hereinafter referred to as "the Act")- The petition was dismissed in default on 10.4.1976.

3. On 8.5.1976, the petitioners moved an application for restoration of the claim petition under Order 9, Rule 9 of the Code of Civil Procedure, 1908, (hereinafter referred to as "the Code") read with Rule 21 of the U.P. Motor Accident Claims Tribunal Rules, 1967. The application was dismissed in default of appearance on 16.10.1976.

4. Thereafter, on 11.11.1976, the petitioners filed an application under Order 9, Rule 9 and Section 151 of the Code praying for the restoration of the application dated 8.5.1976.

5. The respondents objected to the restoration of the restoration application dated 8.5.1976 and their objection was upheld. The Tribunal dismissed the application of the petitioners dated 11.11.1976 vide its order dated 19.5.1977.

6. The order dated 19.5.1977 is under challenge in this petition under Article 226 of the Constitution of India. The petition contains further prayer for quashing the order dated 16.10.1976 whereby the restoration application dated 8.5.1976 had been dismissed on default.

7. For the petitioners it is urged that the Tribunal committed grave error in passing the two impugned orders, namely, orders dated 16.10.1976 and 19.5.1977.

8. Nothing has been pointed out by the learned Counsel for the petitioners which may constitute a sufficient ground to impeach the legality of the order dated 16.10.1976. In rejecting the prayer of the petitioners for restoration of the restoration application dated 8.5.1976, the Tribunal has relied upon two grounds, Firstly, that provisions of Order 9, Rule 9 and Section 151 of the Code were not available for setting aside the order dated 16.10.1976 dismissing the restoration application dated 8.5.1976. Secondly, that the cause shown by the petitioners for default in prosecuting the restoration application dated 8.5.1976 on 16.10.1976 was not substantiated as there was no evidence in support thereof.

9. The Court has examined, anxiously and carefully, the grounds relied upon by the Tribunal, and is unable to be persuaded that in relying upon them it committed any error, much less grave error, either of fact or law, warranting interference in these proceedings.

10. Rule 21 of the U.P. Motor Accident Claims Tribunal Rules, 1967, which made certain provisions of the Code applicable to the proceedings before the Tribunal u/s 110-A of the Act, reads thus:

21. CPC to apply in certain cases. -- The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XXVIII, Rules 1 to 3.

11. From a bare perusal of the above rule it is clear that all the provisions of the Code have not been made applicable to the proceedings before the Tribunal. Only the provisions specified in the rule have been made applicable. Neither Order 9, Rule 9 nor Section 151 of the Code has been made applicable to the proceedings for restoration of the restoration application dismissed in default. These provisions appear to have been deliberately excluded from application. It is a case of casus omissus.

12. The inherent powers contemplated u/s 151 of the Code are available only to the Courts or to such other statutory Tribunal or authority which are expressly invested with such powers. The statutory Tribunal or authority is not assigned the status of a Court. The power and jurisdiction of the statutory Tribunal or authority ought to be found in the statute creating them. No power which is not expressly conferred upon it by the statute is available to the statutory Tribunal /

authority.

13. Thus, the Tribunal was perfectly justified in coming to the conclusion that neither Order 9, Rule 9 nor Section 151 of the Code clad it with power to restore the restoration application dated 8.5.1996.

14. The second ground, namely, the lack of evidence to support the sufficiency of the cause for default in prosecuting the restoration application dated 16.10.1976 also is unimpeachable. The cause for default set up in the affidavit of the petitioners was denied by the other side in the counter-affidavit. The Tribunal has rightly pointed out that there was only oath v. oath; and that in the absence of any other independent evidence to support the same the sufficiency of the cause could not beheld to be proved.

15. The foregoing discussion leads to an irresistible conclusion that the impugned order of the Tribunal dated 19.5.1977 is perfect, both in law and on facts, and is not liable to be disturbed.

16. In the result, the petition fails and is hereby dismissed. There is no order as to costs.