
(2004) 04 BOM CK 0020
In the Bombay High Court

Narayan Kothiramji Bawane

APPELLANT

Vs

Motor Accident Claims Tribunal

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2005) 2 ACC 42 : (2005) 1 ALLMR 59

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Judgement

A.H. Joshi, J.—Both the applicants are amongst those who were invited as victims in a motor accident occurred within the territory of Runakata Police Station in Agra District on 4.7.1998. The injured persons were moved to S.N. Hospital, Agra and were later on shifted to Nagpur by Ambulance. They have filed two separate claims for compensation u/s 166 r/w Section 140 of the Motor Vehicles Act, 1988. Both these claims were rejected at the threshold/returned by the Motor Accident Claims Tribunal, Nagpur, by identical order in both cases passed on 11th January, 2000.

2. The learned Member, Motor Accident Claims Tribunal, Nagpur, (M.A.C.T.) found that the claim petitions were not filed in conformity with Rule 254(5) of Maharashtra Motor Vehicles Rules, 1989, which requires every applicant to annex to the application the documents namely:

(i) Injury Certificate.

(ii) True copy of First Information Report or Police Station Diary Entry or Traffic Accident Report duly certified by the Police Officer of the police station concerned.

(iii) Certified copy of the Form Comp "AA" as prescribed under Rule 254(8).

3. The learned Member, M.A.C.T., Nagpur found that the copy of F.I.R. was not filed along with the report in both these cases. He, therefore, found that due to the said deficiency, which amounted to be a material non compliance, the

applications cannot be accepted.

4. During the course of argument as to whether the application should be registered, the Counsel for the applicant has placed reliance upon the reported judgment of Karnataka High Court in Meenakshamma Vs. Hanumanthappa, , to substantiate the contention that not only that the petition can be entertained in absence of any document relating to the fact of the accident being entered into police station record, but even the claim petition can be finally allowed in absence thereof. The learned Member, M.A.C.T. did not agree with the submission and in the result declined to accept the applications.

5. The point that arose for my consideration is as to what shall be the effect of the mandatory import that follows by virtue of the nature of Rule 255. Sub-rule (1) of Rule 255 is quoted below for ready reference:

255. Application for compensation u/s 140-

(1) Notwithstanding anything contained in Rule 254 every application for a claim u/s 140 shall be filed before the Claims Tribunal, in triplicate, and shall be signed by the applicant and the following documents shall be appended to every such application, namely:

(i) Panchanama of the accident;

(ii) First Information Report or Station Diary Entry or Traffic Accident Report, duly certified by the police;

(iii) Medical Certificate in Form Comp B of the First Schedule or in case of death, post-mortem report or death certificate; and;

(iv) Certified copy of the Form "Comp AA" of the first schedule mentioned in Rule 254(8).

The learned Member of M.A.C.T. seems to have construed the word "shall" in Rule 255(1) meaning thereby that it had mandatory application and in the result declined to accept the application.

6. The learned Member, M.A.C.T. ought to have adverted to the position that the provisions relating to liability arising out of motor accident is embodiment of a right, in a statutory enactment, which enactment has advanced in the cause of social security. The remedy u/s 166 with inbuilt equipment of Section 140 ought not be permitted to be frustrated. Sub-rule (1) of Rule 255 is an equipment in aid to the substantive provision and such equipment in the aid ought not be allowed to be used to destroy or deteriorate the main remedy that has been created by statute. It is this background in which the learned Member, M.A.C.T. ought to have read the precedent i.e. the judgment of Karnataka High Court that is sought to be relied to persuade. In this judgment the Court has observed to the effect that upon reporting of the matter to the police authority or to the medical officer, when is done and consequential recording by the police is a matter within the control of police officers, therefore, the claim under Motor Vehicles Act

cannot be declined on the ground that such a report has not been made. True it is that the judgment of other High Court has persuasive value nevertheless the rationale-engaged therefore is worth adoption by approval thereof.

7. Reporting of matter of accident to the Police by the Medical Officer, by the victim or his relatives and upon such report, recording of evidence, etc. by the police are the matters which are substantially beyond the control of the victim. Such liability of a owner of motor vehicle cannot be rendered contingent upon such eventuality. In the result, I hold and construe that the requirement prescribed in Sub-rule (1) of Rule 255 of Motor Vehicles Rules, 1989 has got directory force in the nature and it cannot be construed to have mandatory force, in order to expel the applicant from the forum.

8. In the result, the judgment and order passed by the Member, M.A.C.T., Nagpur, rejecting the present applicant's claim petition by order dated 11th January, 2000, is liable to be set aside and is accordingly set aside. The Motor Accident Claims Tribunal, Nagpur, shall receive, register and decide the claim petitions of present applicants Narayan s/o Kothiramji Bawane and Purushottam s/o Sadashi Harode according to law.

Rule made absolute in the above terms. No order as to cost.