
(1987) 01 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 624 of 1984

Nazir Ahmed

APPELLANT

Vs

Kishan Nandlal Bhardia

RESPONDENT

Date of Decision : 20-01-1987

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 110A, 92A

Citation : (1988) ACJ 1097

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : R.M. Borde, for the Appellant; Vivek Bhavthankar and S.L. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pratap, J.—Order dated 30th April, 1986 passed by the Motor Accidents Claims Tribunal, Latur, dismissing Motor Accident Claim Petition No. 38 of 1984 is the subject-matter of this petition under Article 227 of the Constitution.

2. There is no dispute that the accident took place on 25.1.1984 and in the said accident Khaja, son of the present Petitioner, died on the spot. The Petitioner thereupon filed petition before the Motor Accidents Claims Tribunal u/s 92-A of the Motor Vehicles Act, 1939 (hereinafter "the Act"). This application was, however, dismissed on the ground that it was filed beyond the period of limitation and delay in that behalf was not satisfactorily and properly explained. Hence this petition.

3. Now, nowhere in the relevant provisions of the Act does one find any period of limitation for filing an application u/s 92-A of the Act. There is undisputedly a period of six months prescribed for an application u/s 110-A of the Act. The present was, however, not an application u/s 110-A but an application only u/s 92-A of the Act. The Tribunal, therefore, remained under an erroneous impression that the six months" period prescribed for an application u/s 110-A of

the Act would be or is a period of limitation also for an application u/s 92-A. Of course, the object of enacting Section 92-A by the Amending Act of 1982 was to speed up relief measures in respect of certain class of accidents and irrespective of whether the accident was the result of a fault on the part of one or the other party. Section 92-A speaks of liability to pay compensation on the principle of no fault. Learned Counsel appearing for the Respondents was also unable to invite this Court's attention to any specific provision in the Act prescribing a period of limitation for an application u/s 92-A. There thus being no period of limitation involved, there cannot be any question of delay in the filing of the application beyond any statutory period of limitation, much less would a question of condoning or not condoning delay in that behalf arise or survive. The Petitioner's application u/s 92-A was, therefore, required to be heard and decided on its own merits and in accordance with law.

4. However, by way of abundant caution and assuming that there is a period of limitation, I am, in the facts and circumstances of the case, inclined to condone the same. In a matter such as this, where a fatal accident occurs, relief cannot be denied on a mere ground of delay. Better concept of justice requires condonation of delay in such cases and passing orders on merits rather than dismissing claims on technicalities. The whole object and spirit of the Amending Act of 1982 indicating, inter alia, liability to pay compensation on the principle of no fault would stand defeated if claims thereunder are disallowed or rejected on a ground of limitation, all the more when the said claim arises as a result of a fatal accident as in this case.

5. In this view of the matter, the impugned order is liable to be set aside. Considering the statutory provisions of Section 92-A, I was inclined to pass an order here and now for payment of compensation of the fixed amount of Rs. 15,000/- on the principle of no fault liability. Counsel for the Respondents, however, requested for a remand, inter alia, on the ground that Respondent No. 3, the insurance company, would require to go into the question of its own liability which is based on the insurance in question. Be that as it may, I am inclined to remand the matter but with a direction to have the proceedings heard and decided within two months of the writ hereof reaching the trial court. The accident is of 25th January, 1984. It was a fatal accident. The vehicle in question was insured at the relevant time. In the circumstances, there should be no difficulty at all in passing an appropriate and expeditious order u/s 92-A. Only question would be whether Respondent No. 3, insurance company, would also be liable, depending upon whether the vehicle in question was insured with the said company.

6. Hence order:

This petition is allowed. The impugned order dated 30th April, 1986 is set aside and quashed. The proceedings are sent back to the Tribunal. The same shall be heard and disposed of under its original number 38 of 1984 as expeditiously as possible but in any event within sixty days of the writ hereof reaching the

Tribunal.

7. Rule is made absolute in terms aforesaid but, in the circumstances, with no order as to costs.

8. Writ to go down immediately.