

(2009) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : M.A.C.M.A.M.P. No. 8919 of 2008 in M.A.C.M.A. (SR) No. 47584 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Srikakulapu Ayyababu and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 473
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6
Criminal Procedure Code, 1973 (CrPC) — Section 195
Land Acquisition Act, 1894 — Section 18
Motor Vehicles Act, 1988 — Section 110A, 110B, 110D, 162, 166

Citation : (2011) ACJ 228

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; B.G. Uma Devi, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This M.A.C.M.A. is preferred against an award dated 23.7.2007, made in M.V.O.P. No. 846 of 2004 on the file of Eighth Additional District Judge (Fast Track Court), Visakhapatnam along with an application M.A.C.M.A.M.P. No. 8919 of 2008 praying for condonation of delay of 273 days in filing the M.A.C.M.A.

2. Mr. Kota Subba Rao, the learned Counsel representing the Appellant, made elaborate submissions contending that even though M.A.C.M.A. is at the unnumbered stage, this Court can exercise the discretion of granting interim stay, may be by imposing certain conditions. The learned Counsel had drawn the attention of this Court to the different provisions of Motor Vehicles Act, 1988 (hereinafter in short referred to as "the Act" for the purpose of convenience) and the Rules made thereunder and the relevant provisions of the Code of CPC

(hereinafter in short referred to as "the Code" for the purpose of convenience) and also placed strong reliance on several decisions to substantiate his submissions. Though in this matter, Mr. Kota Subba Rao, learned Counsel is appearing for the Appellant, inasmuch as the other standing counsel and the learned advocates representing the other insurance companies and Corporations also made elaborate submissions. This Court heard in elaboration the undernoted learned Counsel as well.

Mr. A.V.K.S. Prasad, Mr. T. Ramulu, Mr. Kota Subba Rao, Mr. V. Srinivasa Rao, Mr. P. Bhan Prakash, Ms. Maamu Vani, Ms. S.A. Jayanthi, Ms. A. Malati, Mr. Jayani S.C. Sekhar, Ms. Kalpana Ekbote, Mr. Sriman, Mr. S.A.V. Ratnam, Mr. Kambham Madhava Reddy, Mr. C. Prakash Reddy, Mr. Naresh Byrapaneni, Ms. W.V.S. Rajeswari, Mr. Ch. Srinivas and Mrs. B.G. Uma Devi.

3. Heard the learned Counsel.

4. The short question to be decided is that in M.A.C.M.A. at the unnumbered stage whether discretion can be exercised by this Court to grant stay conditional or otherwise, in the light of Order 41, Rule 3-A of the Code.

5. Order 41, Rule 3-A of the Code dealing with application for condonation of delay reads as hereunder:

3-A. Application for condonation of delay.--(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the Appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period.

(2) If the court sees no reason to reject the application without the issue of a notice to the Respondent, notice thereof shall be issued to the Respondent and the matter shall be finally decided by the court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

(3) Where an application has been made under Sub-rule (1), the court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the court does not after hearing under Rule 11, decide to hear the appeal.

6. Order 41, Rule 5 of the Code deals with stay by appellate court and also stay by court, which passed the decree. Order 43, Rule 1 of the Code deals with appeal from orders and Order 43, Rule 2 of the Code specifies that the rules of Order 41 shall apply, so far as may be, to appeals from orders.

7. Submissions in elaboration had been made in relation to the relevant provisions of the Act, in particular Sections 168, 169, 173, 174 and 175 of the Act. Section 168 of the Act reads as hereunder:

168. Award of the Claims Tribunal.-- (1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall after giving notice of the

application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

8. Section 169 of the said Act dealing with procedure and powers of the Claims Tribunals reads as hereunder:

169. Procedure and powers of Claims Tribunals.--(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry

9. Section 173 of the said Act deals with appeals and the said provision reads as hereunder:

Appeals.--(1) Subject to the provisions of Sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

10. It is pertinent to note that the second proviso specifically provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal in time.

11. Further, reliance was placed on Section 174 and Section 175 of the Act as well.

12. Section 174 of the Act dealing with recovery of money from insurer as arrear of land revenue reads as hereunder:

174. Recovery of money from insurer as arrear of land revenue.--Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

13. Section 175 of the Act dealing with bar on jurisdiction of civil courts reads as hereunder:

Bar on jurisdiction of civil courts.-- Where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the civil court.

14. Further, reliance was also placed on Rule 473 of the Andhra Pradesh Motor Vehicles Rules, 1989 and the said rule dealing with Code of CPC to apply in certain cases, reads as hereunder:

The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908), shall so far as may be apply to proceedings before the Claims Tribunal, namely, Order 5, Rules 9 to 13 and 15 to 30; Order 9, Order 13, Rules 3 to 10; Order 16, Rules 2 to 21; Order 17 and Order 28, Rules 1 to 3.

15. Reliance was also placed on the decision of the Apex Court in United Bank of India v. Naresh Kumar, 1996 (7) Apex 301, wherein the Apex Court had occasion

to deal with the curable procedural irregularities and the technicalities not to defeat the public interest.

16. The decision of the Division Bench in *Musala Annaji Rao v. Boggarapu Papaiah Setty*, 1974 ALT 441, also had been relied on.

17. The Apex Court had an occasion to deal with the object of Order 41, Rule 3-A of Code in State of M.P. and Another Vs. Pradeep Kumar and Another, and the Supreme Court at paras 11 and 19 observed as hereunder:

(11) No doubt, Sub-rule (1) of Rule 3-A has used the word "shall". It was contended that employment of the word "shall" would clearly indicate that the requirement is peremptory in tone. But, such peremptoriness does not foreclose a chance for Appellant to rectify the mistake, either on his own or being pointed out by the court. The word "shall" in the contest need to be interpreted as an obligation cast on the Appellant. Why should a more restrictive interpretation be placed on the sub-rule? The rule cannot be interpreted very harshly and make the non-compliance punitive to an Appellant. It can happen that due to some mistake or lapse an Appellant may omit to file the application (explaining the delay) along with the appeal.

(19) The object of enacting Rule 3-A in Order 41 of the Code seems to be twofold. First is, to inform the Appellant himself who filed a time-barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to communicate to the Respondent a message that it may not be necessary for him to get ready to meet the grounds taken up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the rule that it is intended to operate as unremediably or irredeemably fatal against the Appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3-A, Order 41 of the Code.

18. Further, strong reliance was placed on the decision of the Full Bench of Rajasthan High Court in *Dilip Bhai Gajrota v. Contractor Lime Gotan* AIR 1996 Raj 1999, wherein at paras 10 and 11 it was observed as under:

(10) The object of inserting Rule 3-A (1) in Order 41 was to put an end to the practice of admitting of appeal subject to the decision on the question of limitation. This practice was disapproved by the Privy Council and it stressed the expediency of adopting a procedure under which the final determination of the question as to limitation would be possible before admission of the appeal. Therefore, with a view to see that the question of limitation does not remain lingering, the provision of Rule 3-A in Order 41 has been inserted.

(11) In our opinion, same is the object of Rules 132 and 134 of the Rajasthan

High Court Ordinance. What we have to consider, in such circumstances, is the question whether a strict compliance with these procedural requirements, at the cost of substantial justice, is the intent of the legislature in legislating these provisions. In our opinion, and as will be seen from the opinion of the several other High Courts, such was never the intent of the legislature. It was meant solely to expedite the decision of the appeal on merits by first requiring adjudication of the question of delay in filing the appeal.

19. Further reliance was placed on the decision of the Division Bench in *Soni @ Bhuthulasi and Others Vs. Kunda Nageswara Rao and Another*, .

20. In *Shyam Sunder Vs. Satya Ketu and Others*, , the Apex Court while dealing with the Representation of the People Act, 1951 and Allahabad High Court Rules, under Order 41, Rule 1 of the Code for appeal u/s 116-A of the Act aforesaid, it was held that all that is necessary to be filed is copy of judgment of the Tribunal and no more and Order 41, Rule 1 does not apply.

21. In *Madras Motor & Genl. Ins. Co. Ltd. v. Katanreddi Subbareddy*, 1975 ACJ 95 (AP), the learned Judge of this Court at para 4 observed as hereunder:

Much as I am tempted to hold that the cross-objections are maintainable, I am afraid I cannot do so. A claim for compensation arising out of accidents involving use of motor vehicles has to be made u/s 110-A of Motor Vehicles Act in the form of an application. The application is to be made to a Claims Tribunal. The determination of the Claims Tribunal is called an award u/s 110-B of the Act. The appeal that is provided by Section 110-D is against the award of the Claims Tribunal. Thus, the proceeding is initiated not by a plaint but by an application. The proceeding is before a Tribunal and not before a court. The proceeding ends with an award and not with a decree. The award is, therefore, not a decree within the meaning of Section 2 (2) of the Code of CPC since the proceeding is not a suit initiated by the presentation of a plaint to a court. Nor is the award treated by the Act as the decree of a court for the purpose of an appeal as in the case of awards made by a court on reference u/s 18 of the Land Acquisition Act. In *(Delhi) Venkatarama Doss Pantulu Vs. (Delhi) Bheema Rao*, , a Full Bench of Madras High Court held that an order passed by the District Judge u/s 84(2) of Act II of 1927 on an application made to the District Judge to set aside the decision of the Hindu Religious Endowments Board u/s 84(1) was not a decree as the proceeding before the District Judge was not a suit, not having been instituted by the presentation of plaint. In the present case, the subject-matter of the appeal is not even the decision, arrived at by a court but the decision arrived at by a Tribunal. There cannot, therefore, be any doubt that the award of the Claims Tribunal cannot be treated as the decree of a court. Now, the provisions of Order 41 of Code of Civil Procedure, apply to appeal from original decrees of courts.

In particular, Order 41, Rule 22 expressly refers to the court below and the decree appealed against, Order 41, Rule 22 cannot, therefore, apply to appeals u/

s 110-D of the Motor Vehicles Act. Rule 2 of Order 43 which deals with appeals against orders provides that the rules of Order 41 may apply to appeals from the orders specified in Rule 1 and other orders of any civil court from which an appeal to the High Court is allowed. Since the Claims Tribunal is not a civil court, Order 43, Rule 2 does not also apply. The result is that the cross-objection filed by the Respondent in C.M.A. No. 493 of 1972 must be held to be not maintainable.

22. In *Virinder Kaur v. Surinder Singh* 1980 All India Hindu Law Reporter 366, the learned Judge of Punjab and Haryana High Court, while dealing with provisions of Hindu Marriage Act, 1955 and applicability of certain provisions of the Code, observed as hereunder:

A preliminary objection has been raised by learned Counsel for the Respondent, that appeal is time-barred. The relevant facts, in this behalf, may hereby be stated. The decree for divorce was passed on 30.12.1978. The appeal, accompanied by a certified copy of the judgment under appeal was filed on 1.2.1979, that is, three days after the prescribed period of 30 days. Before filing the appeal the Appellant on 27.1.1979, (sic) and actually delivered to the Appellant on 29.1.1979. If the period spent in securing the certified copy of the judgment is excluded, indisputably, the appeal was filed much within time. However, according to the learned Counsel for Respondent, u/s 28 of the Act, appeals are filed against the decrees and not judgments and as such, the appeal could be held to be properly filed only on the date when the certified copy of the decree was filed along with the appeal. It was stressed that in the present case, though the appeal was filed on 1.2.1979, yet the certified copy of the decree was filed as late as on 5.2.1979 and, therefore, the appeal was clearly beyond time. It was also urged that even if the appeal filed along with a certified copy of the judgment is to be treated as proper appeal, Appellant was not entitled to exclude the period spent in obtaining the certified copy of the judgment and Section 12 of the Limitation Act, cannot be taken advantage of, for the purpose of exclusion of this period, as the provisions of the Limitation Act cannot apply to the proceedings or the appeals under the Act, which is a special enactment. Neither of these contentions can be agreed to in *Dolit Singh Piara Singh Vs. Shamsheer Kaur*, , it was held by the Division Bench that neither Sections 33 and 62 (2) and (9), nor Order 41, Rule 1, Code of Civil Procedure, apply to the adjudications under the Act and hence, the judgments in such cases are not necessarily to be followed by a formal decree, as is expressly required not necessarily to be followed by a formal decree, as is expressly required by those provisions of the said Code. The mandate under Order 41, Rule 1, that the certified copy of the decree must accompany the appeal was also held not to be applicable to the appeals filed under the Act. Sitting singly, I am bound by the ratio of the decision of the learned Division Bench. Even otherwise, I am in entire agreement with the above decision.

23. Reliance has also been placed on the decision reported in *Basappa v. K.H.*

Sreenivasa Reddy 1982 ACJ (Supp) 585 (Karnataka), wherein the Division Bench of Karnataka High Court observed at para 15 as follows:

Therefore, it is obvious that the strict rules of pleading contained in the Code of CPC cannot be invoked while considering a claim petition. The petition is not a plaint. It does not provide for "prayer" in a separate column. Hence, there is no rational basis to apply the doctrine of variance between pleadings and proof.

24. Further, a decision of the Division Bench in United India Insurance Co. Ltd. and Others Vs. Shaik Saibaqtulla and Others, , was also relied upon and the learned Division Bench has observed at para 9 as follows:

This principle cannot be applied to a case of claim of compensation under the Motor Vehicles Act. Under the Motor Vehicles Act, there is no provision for amending the O.P. after the period of limitation for filing the O.P. Similarly, there is no provision or rule which allows an O.P. to be amended after the O.P. is decided. The facts, which are discovered subsequently cannot form the basis for seeking an amendment of the O.P. Another decision relied upon by the claimant's counsel is Anand Kumar Jain v. Union of India, 1986 ACJ 774 (SC). In this decision, the permanent disability of 50 per cent was discovered after filing the original claim. Then an amendment was sought for enhancement of the original claim. This was filed while the O.P. was still pending. Though the Claims Tribunal and the High Court negatived it, the Supreme Court while allowing the amendment to the O.P., directed the Respondents to file supplementary written statements and then get along with the trial. In the present case, the facts are totally different. The claim has been adjudicated and compensation awarded. The injured, on his own, went to the United States with a fond hope that he can have a full cure and underwent costly treatment. We are unable to understand how such remote actions can give rise to a cause of action for the injured-claimant to seek amendment of the O.P. If the injured Petitioner feels that he is entitled to relief, he has necessarily to file a fresh suit and claim the damages or if he thinks that a fresh petition is maintainable, he should file a petition and seek his remedy. It should also be remembered that the present amendment petition which was filed on 6.10.1989 is hopelessly barred by time because the accident took place on 17.7.1983 and the claim has been adjudicated finally by the court on 3.3.1988. We are of the view that the amendment sought for cannot be allowed and C.M.P. No. 18898 of 1991 has to be dismissed.

25. In Smt. Sona and Others Vs. General Manager, Haryana Roadways Bus Depot and Others, , the learned Judge of Punjab and Haryana High Court observed at para 4 as follows:

The Motor Vehicles Act is a legislation which was enacted for the benefit of the claimants. The object of the Act is to provide monetary benefits to the dependants of a deceased person who dies in an accident in order to avoid hardship to them. More so, the rule to strict compliance of the provisions of Code of CPC is not to be applied to the accident cases.

26. Further, in Himachal Road Transport Corporation Vs. Devi Singh and Another, , the learned Judge of the High Court of Himachal Pradesh observed at paras 4 and 5 as follows:

The Motor Vehicles Act is a special Act and u/s 174 of this Act the procedure for recovery of money from any person under an award has been prescribed, though heading of this section denotes that it is for recovery of money from the insurer, as arrear of land revenue. This section is:

"Recovery of money from insurer as arrear of land revenue.--Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and then Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

As per this section, on an application made to the Tribunal by the person entitled to the amount due to him under an award from any person, may be from the owner of the vehicle or from the insurer, the Tribunal will issue a certificate for the amount to the Collector who will recover such amount in the same manner as arrears of land revenue. Section 169 which provides for procedure and powers of Claims Tribunal for holding inquiry u/s 168 of the Act does not cover the procedure for execution of an award. Reference to the Rules made by the State Government u/s 176 of the Act is not relevant in view of Section 175. Therefore, in view of special procedure prescribed for recovery of money under an award the general procedure prescribed under the Code of CPC for the purpose of execution is not applicable.

27. Further reliance was placed on the decision of the larger Bench of this Court in The Andhra Pradesh State Road Transport Corporation and Another Vs. B. Vijaya and Others, , wherein the larger Bench has observed as hereunder (para 72):

Under Rule 473 of the A.P. Motor Vehicles Rules, only certain provisions were made applicable to proceedings before the Claims Tribunal. Section 34, Code of CPC is not one such provision, which was made applicable to the cases arising under the Motor Vehicles Act.

28. No doubt, certain submissions were made that these applications are being moved u/s 151 of the Code and hence, the rigor of Order 41, Rule 3-A of the Code cannot be made applicable to these cases.

29. In the light of the facts and circumstances and also taking into consideration the object and the scheme of the Act aforesaid and also the specific Rules, which had been already referred to supra, this Court is satisfied that in M.A.C.M. As. even at unnumbered stage, depending upon the facts and circumstances of a particular given case, the court may exercise the discretion of granting conditional or unconditional stay as the case may be.

30. In the light of the same, interim stay granted on condition of the Petitioner/

Appellant depositing half of the decretal amount and costs within a period of six weeks.

31. Notice returnable in four weeks.