
(2020) 12 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : CMAM No. 171 Of 2009

New India Assurance Company Limited	APPELLANT
Vs	
Gh. Mohammad Bhat And Other	RESPONDENT

Date of Decision : 24-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 140, 158(6), 165(1), 166,166(1), 166(2), 166(3)
Motor Vehicles (Amendment), 1994 — Section 53
Motor Vehicles Act, 1939 — Section 92A, 110A, 110(1)
Industrial Disputes Act, 1947 — Section 10

Citation : (2020) 12 J&K CK 0029

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Manzoor A. Dar, Mohsin Qadri

Final Decision : Allowed

Judgement

1. Impugned in this Appeal is Award dated 22nd June 2009, given by Motor Accident Claims Tribunal, Srinagar (for short "Tribunal") on a claim

petition, bearing File no.27/claim, titled Gh. Mohammad Bhat v. Gh. Ahmad Bhat and others, saddling appellant Insurance Company with liability to

indemnify insured and pay compensation of Rs.3,18,000/- along with 6% interest from the date of institution of claim petition till final realization, on the

grounds mentioned in Appeal on hand.

2. I have gone through the file and considered the matter.

3. A claim petition, as is discernible from the file, was filed by respondent no.1 before the Tribunal on 14th March 2002, with respect to an accident

that had taken place on 21st February 1974 for grant of compensation in the amount of Rs.25.00 Lacs. Respondent no.1 is stated to have been hit by a

vehicle (Truck) bearing Registration no.JKB/965, driven by respondent no.3, when respondent no.1 had been walking on correct side of the road near

Nowpora Bridge, Srinagar, due to which he got seriously injured and during surgical procedure his right leg below knee was amputated, resulting in

permanent disablement. An FIR no.42/1971 was also registered with concerned police station.

4. Upon presentation of claim petition before the Tribunal, appellant Insurance Company caused its appearance and filed its written statement stoutly resisting claim petition.

5. The Tribunal, given pleadings of parties, framed following issues for determination:

1. Whether on 21.02.1974, respondent no.2, Ramzan Sheikh, was plying Truck no.JKB/965 rashly and negligently as a result of which at Nowpora

Bridge it hit the petitioner who sustained severe bodily injuries rendering him permanently disabled? OPP

2. Whether the petition being time barred, is not maintainable as the same has been filed after 28 years? OPR-3

3. Whether the petition is not maintainable due to non-joinder of necessary and proper party? OPR-3

4. Whether the offending vehicle was not having any Insurance cover and as such insurance company cannot be held liable to indemnify the insured and compensate the petitioner? OPR-3

5. Whether the driver of the offending vehicle was not holding a proper driving licence on the date of accident and as such the Insurance Company cannot be saddled with the liability? OPR-3

6. In case issue no.1 is proved in affirmative, to what amount of compensation the petitioner is entitled to, from whom and in what proportion? OPP

7. Relief?

6. Parties adduced and examined witnesses before the Tribunal. By impugned Award, the Tribunal directed appellant Insurance Company to pay

compensation to respondent no.1 in the amount of Rs.3,18,000/-along with 6% interest from the date of institution of claim petition till final realisation.

7. Submission of learned counsel for appellant is that claim petition was filed before the tribunal after inordinate delay of 28 years and therefore, being

stale. Another submission of learned counsel for appellant is that policy

document relied upon by claimant in claim petition related to the period commencing from 12.10.1975 to 11.10.1976, whereas accident had taken place prior to that period, that is on 21st February 1974; thus, appellant Insurance Company was not to be fastened with liability to pay compensation to respondent no.1. He avers that it was pleaded before the Tribunal that even if claimant proved existence of policy during period of accident, liability of insurance company would be Rs.50,000/- only. The Tribunal is stated to have not recorded a finding vis-à-vis time barred nature of claim petition and while passing impugned Award the Tribunal did not consider these important aspects of the matter. He, therefore, seeks setting-aside of impugned Award.

8. Contention of learned counsel for respondent is that Subsection (3) of Section 166 of the Act of 1988 has been omitted by Section 53 of Motor

Vehicles (Amendment), 1994, which came in force from 19th November 1994 and the effect of the Amending Act is that with effect from 14th

November 1994, there is no limitation for filing claim petitions before the Tribunals in respect of any accident. It is also contended that Parliament

realised grave injustice and injury, which was being caused to heirs and legal representatives of victims, who died in accidents by rejecting their claim

petitions only on ground of limitation and it is a matter of common knowledge that majority of claimants for such compensation are ignorant about the

period during which such claims should be preferred. In its wisdom the Parliament, rightly, thought that prescribing a period of limitation and restricting

the power of Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in

many cases was likely to cause injustice to the claimants.

9. Though various submissions have been made by learned counsel for parties, yet it would be in the fitness of things to deliberate upon the submission

qua time-barred and stale claim. In the given facts and circumstances of the case Section 110-A of Motor Vehicles Act, 1939 (for brevity 'Act of

1939') is apt to be looked into as in the present case accident is said to have taken place during currency of Act of 1939, i.e., 21st February 1974,

which is reproduced herein after:

'110-A. Application for compensation. -

(1) An application for compensation arising out of an accident of the nature

specified in sub-section (1) of Section 110 may be made-

(a) by the person who has sustained the injury; or (aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that

where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of

or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as

respondents to the application.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and

shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation under Section 92- A is made in such application, the application shall contain a separate statement to

that effect immediately before the signature of the applicant;

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was

prevented by sufficient cause from making the application in time.

10. What emerges from above-quoted Section 110-A of the Act of 1939, is that six months period of limitation was available to a person to file a claim

petition for grant of compensation from the date of occurrence of the accident. Even in subsequent legislation " Motor Vehicles Act, 1988 (for short

"Act of 1988"), Section 166 (3) provided six months to file a claim petition. It would be advantages to reproduce Section 166 hereinafter:

166. Application for compensation. -

(1) An application for compensation arising out of an accident of the nature specified in sub- section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be

made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be

impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area

in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or

within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that

effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is

satisfied that the applicant was prevented by sufficient cause from making the application in time.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation

under this Act.â??

14. Perusal of Section 166 of the Act of 1988 reveals that an application for compensation arising out of an accident of the nature specified in

Subsection (1) of section 165 can be made by a person who has sustained the injury or by owner of property or where death has resulted from the

accident, by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal

representatives of deceased. However, where all legal representatives of deceased have not joined in any such application for compensation,

application shall be made on behalf of or for benefit of all legal representatives of deceased and legal representatives who have not so joined, shall be

impleaded as respondents to the application. Subsection (2) of Section 166 provides that every application under Subsection (1) of Section 166 shall be

made, at the option of claimant, either to Claims Tribunal having jurisdiction over the area in which accident occurred, or to Claims Tribunal within

local limits of whose jurisdiction claimant resides or carries on business or within local limits of whose jurisdiction defendant resides, and shall be in

such form and contain such particulars as may be prescribed. However, where no claim for compensation under Section 140 is made in such

application, the application shall contain a separate statement to that effect immediately before the signature of the applicant. Subsection (3) of Section

166 of the Act of 1988 envisages that no application for compensation shall be entertained unless it is made within six months on occurrence of

accident. However, Claims Tribunal can entertain application after expiry of six months but not later than twelve months, if Tribunal is satisfied that

applicant was prevented by sufficient cause from making application in time. Thus, noticeably, period of limitation provided under Subsection (3) of

Section 166 of the Act of 1988, could be relaxed up to twelve months, by demonstrating that there was sufficient cause for such delay. The period of

limitation as provided under Subsection (3) of Section 166 of the Act of 1988, however, was completely done away with from 14th November 1994, as

Section 166(3) came to be deleted, from the Act of 1988.

15. It may be pertinent to mention here that a question arose for consideration before the Supreme Court in M/s Purohit and Company v. Khatoonbee

and another, 2017 AIR (SC) 1612, as to whether omission of Subsection (3) of Section 166 of the Act of 1999, has effect of allowing a claimant to file

a claim petition, at any time, and whenever he chooses, even after a decade, which was in detail discussed and answered by the Supreme Court in

negative. It would be profitable to reproduce pertinent extract of the above judgement hereunder:

â??9. The solitary contention advanced at the hands of the learned counsel for the appellant was, that even though there may no longer be a defined

period of limitation, for approaching the Motor Accident Claims Tribunal, to raise a claim for compensation (under the provisions of the Motor

Vehicles Act, 1988), yet a claimant must approach a Court, for raising such a claim within a reasonable time. It was submitted, that after a period of

time, the claim would be stale and will have to be treated as a dead claim. Such a claim, it was submitted, could not be treated as a surviving claim.

To demonstrate situations when an accident's claim would no longer be considered to be a surviving claim, illustratively it was submitted, that in a

given case when the evidence to establish the rival claims, would not be available, for the mere reason of lapse of time. Either, the witnesses would

not be available, or accessible, on account of lapse of time, resulting in lapse of memory and a situation in which truthful evidence can no longer be

recorded. The contention was, that in such background, it was imperative for the concerned Court, to determine whether, in the facts and

circumstances of a particular case, the claim could be considered as a surviving claim, on the date when the claim petition was filed before the Motor

Accident Claims Tribunal.

10. In support of the contention advanced at the hands of the learned counsel for the appellant, as has been noticed in the foregoing paragraph, learned

counsel invited our attention to Corporation Bank vs. Navin J. Shah, (2000) 2 SCC 628, wherein a claim for compensation had been raised under the

Consumer Protection Act, 1986, wherein also, there was no period of limitation prescribed (at the time, when the claim was raised). Dealing with the

question in hand, this Court had recorded the following observations:

12. We may further notice that there is another strong reason as to why the claim made by the respondent should not have been granted. The

transactions in question took place in the years 1979 and 1981. The difficulties in realisation of the amounts due from the consignee also became clear

at the time when the claim was made before the Corporation and the claim had been made as early as on 19-12-1982. The petition before the

Commission was filed on 25-9-1992 that is clearly a decade after a claim had been made before the Corporation. A claim could not have been filed by

the respondent at this distance of time. Indeed at the relevant time there was no period of limitation under the Consumer Protection Act to prefer a

claim before the Commission but that does not mean that the claim could be made even after an unreasonably long delay.

The Commission has rejected this contention by a wholly wrong approach in

taking into consideration that the foreign exchange payable to Reserve Bank of India was still due and, therefore, the claim is alive. The claim of the respondent is from the Bank. At any rate, as stated earlier, when the claim was made for indemnifying the losses suffered from the Corporation, it was clear to the parties about the futility of awaiting any longer for collecting such amounts from the foreign bank.

In those circumstances, the claim, if at all was to be made, ought to have been made within a reasonable time thereafter. What is reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years' period has been prescribed as the reasonable time under the Limitation Act to lay a claim for money. We think, that period should be the appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also we find that the claim made by the respondent ought to have been rejected by the Commission.

(emphasis is ours)

It would be pertinent to mention, that the claim raised under the Consumer Protection Act, in the above judgment, was delayed by a period of 10 years, and even though, no period of limitation was prescribed, this Court held, that the same was not maintainable.

11. Reliance was also placed on Haryana State Coop. Land Development Bank Vs. Neelam (2005) 5 SCC 91, wherein, this Court held as under:

17. In Nedungadi Bank Ltd.(2001) 6 SCC 222, a Bench of this Court, where S.Saghir Ahmad was a member [His Lordship was also a member in

Ajaib Singh (supra), opined : (SCC pp.459-60, para 6) ""6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers

under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power

is to be exercised reasonably and in a rational manner.

There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of

the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been

apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to

be stale would depend on the facts and circumstances of each case. When the

matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made.

18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio.

The respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10.8.1988. In her replication filed before the Presiding Officer of the Labour Court while traversing the plea raised by the appellant herein that she is gainfully employed in HUDA with effect from 10.8.1988 and her services had been regularized therein, it was averred:

“6. The applicant workman had already given replication to the A.L.C.-cum-Conciliation Officer, stating therein that she was engaged by HUDA from 10.8.1988 as clerk-cum-typist on daily wage basis. The applicant workman has the right to come to the service of the management and she is interested to join them.

19. She, therefore, did not deny or dispute that she had been regularly employed or her services had been regularized. She merely exercised her right to join the service of the appellant.

20. It is true that the respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained the same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding.

Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary jurisdiction. The conduct of the respondent in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

21. The matter might have been different had the respondent been appointed by the appellant in a permanent vacancy.

22. Both HUDA and the appellant are statutory organizations. The service of the respondent with the Appellant was an ad hoc one. She served the appellant only for a period of one year three months; whereas she had been serving HUDA for more than sixteen years. Even if she is directed to be reinstated in the services of the appellant without back wages as was directed by the High Court, the same would remain an ad hoc one and, thus, her services can be terminated upon compliance of the provisions of the Industrial Disputes Act.

It is also relevant to note that there may or may not now be any regular vacancy with the appellant-Bank. We have noticed hereinbefore that in the year 1996, the vacancies had been filled up and a third party right had been created. It has not been pointed out to us that there exists a vacancy.

Having considered the equities between the parties, we are of the opinion that it was not a fit case where the High Court should have interfered with the discretionary jurisdiction exercised by the Labour Court.

23. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."" (emphasis is ours)

It would be relevant to mention, that the above judgment was rendered in a matter, where the challenge was raised under the provisions of the Industrial Disputes Act, 1947, wherein also no period of limitation is prescribed

to approach the Industrial Tribunal. Despite the above, this Court arrived at the conclusion, that a claim raised after a period of 7 years, was not a surviving claim. And therefore, the claim petition was held to be not maintainable.

12. Drawing an analogy to the judgments rendered under the Consumer Protection Act, 1986, as also, under the Industrial Disputes Act, 1947, it was the submission of the learned counsel for the appellant, that even though no period of limitation remains prescribed, after the amendment of Section 166 of the Motor Vehicles Act, 1988, whereby sub-Section (3) of Section 166 came to be deleted (with effect from 14.11.1994), yet it would be imperative to determine, whether at the juncture when the claimant approached the Motor Accident Claims Tribunal, the claim was a live and surviving claim.

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14. The question of reasonability would naturally depend on the facts and circumstances of each case. We are however, satisfied, that a delay of 28 years, even without reference to any other fact, cannot be considered as a prima facie reasonable period, for approaching the Motor Accident Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from paragraph 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Paragraph 4 aforementioned is extracted hereunder:

4. That the Petitioners are poor person and they have no knowledge about the Law. Also the Respondent has not pay the single pie towards any compensation.

15. Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 02.02.1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23.02.2005.

(emphasis supplied)

16. In view of the reasons recorded hereinabove, we hereby set aside the impugned order dated 07.07.2015, and allow the instant appeal, by holding, that the claim raised by the respondents before the Motor Accident Claims Tribunal, was not a surviving claim, when the respondents approached the said Tribunal.â??

16. It is relevant to mention here that in above extracted judgement, the Supreme Court, inter alia, discussed the laid down by it in Haryana State

Coop. Land Development Bank v. Neelam (2005) 5 SCC 91. The Supreme Court in the said referred to case had arrived at a conclusion that a claim

after a period of seven years was not a surviving claim and the claim was held to be not maintainable. The Supreme Court said that it is not as if it can

be open to all and sundry to approach a Motor Accident Claims Tribunal to raise a claim for compensation, at any juncture, after the accident had

taken place and that the individual concerned must approach the Tribunal within a reasonable time. After saying so, the Supreme Court held that any

explanation, given by claimant for approaching the Tribunal after a delay of 28 years, cannot be accepted as such claim is stale and is to be treated as

a dead claim.

17. In the above backdrop and having regard to case set up, judgement rendered by the Supreme Court in the case of M/s Purohit and Company

(supra) squarely covers the case in hand as well.

18. In the present case, the Tribunal, while deciding Issue no.2 (whether the petition being time barred is not maintainable as the same has been filed

after 28 years), relied upon a judgement passed in Dhannalal v. D.P. Vijay Vargiya and others, 1996 ACJ 1013 : (1996) 4 SCC 652, to hold claim

petition maintainable and not time-barred.

It may not be out of place to mention here that the Tribunal, oblivious of the facts and circumstances of cited judgement in Dhannalal (supra), being

extremely distinguishable from the facts of the case before it, has passed impugned Award. In the case of Dhannalal (supra), accident had taken

place on 4th December 1990 and claim petition was filed on 7th December 1991 along with application for condonation of delay, which was of four

days only.

Another important aspect of the matter is that the Supreme Court in M/s Purohit and Company (supra) has held that question of inordinate delay in

approaching Motor Accident Claims Tribunal was not considered in Dhannalal's case (supra). In this regard pertinent excerpt of M/s Purohit and

Company (supra) is reproduced infra:

13. We are satisfied, that the submission advanced at the hands of the learned counsel for the appellant merits acceptance. The judgments on

which the High Court had relied, and on which the respondents have emphasised, in our considered view, are not an impediment, to the acceptance of

the submission canvassed on behalf of the appellant. We say so, because in Dhannalal's case (supra) the question of inordinate delay in approaching

the Motor Accident Claims Tribunal, was not considered.

19. In the instant case there is no disclosure made by claimant/respondent no.1 for the delayed claim petition. It appears, the claim lodged by

claimant/respondent no.1 is wholly stale and evidence, relied upon by him, was, therefore, much more unreliable.

20. In entirety of facts and circumstances, it does appear that claim petition was wholly stale. Though there is no limitation prescribed for filing a claim

petition, yet, as has been held by the Supreme Court in the case of M/s Purohit and Company (supra), a stale claim, such as present one, cannot be

allowed to be raised belatedly, that too, as of right without giving even a semblance of an explanation as to delay of 28 years. In that view of matter,

Appeal deserves to be allowed.

21. For the reasons discussed above, Appeal is allowed and Award dated 22nd June 2009, given by Motor Accident Claims Tribunal, Srinagar on a

claim petition, bearing File no.27/Claim, titled Gh. Mohammad Bhat v. Gh. Ahmad Bhat and others, is set-aside. As a corollary thereof, claim petition

is dismissed.

22. Disposed of in terms of above.

23. Copy of this judgement be sent down.