(1998) 07 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : CIA 63 Of 1997

New India Insurance Company Ltd. — APPELLANT

Vs

Mushtaq Ahmad Dalai — RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 14, 5

Citation : (1998) SriLJ 388 : (1998) SriLJ 389

Hon'ble Judges : G.L.Raina, J

Bench : Single Bench

Advocate : J.A.Kawoosa , H.I.Hussain, Advocates appearing for the Parties

Judgement

1. Motor Accident Claims Tribunal, Anantnag, awarded under the Motor Vehicles Act, the compensation on 30.10.1996 in favour the

claimants/nonapplicant Nos: 1 to 3. The award emanated from that motor accident in which vehicle bearing registration number JKT 4753 got

involved on 16.10.1998 near Kela Mode Ramban on the National High Way. Deceased Gh. Nabi Dalai was allegedly knocked down by the

vehicle as a result of which he sustained fatal injuries.

2. The claimants, the sons and the widow of the deceased, succeeded in obtaining the award in the amount of Rs. 3,60,000/. The Tribunal saddled

the Insurance Co., with which the offending motor vehicle was insured on the relevant date, with the entire liability to pay the amount awarded

alongwith the interest. It appears that the Insurance Company filed on 11.12.1996 the review petition in the Tribunal to canvass that the liability

under the law applicable was limited so the insurer could not be burdened to pay the whole awarded amount. This review petition came to be dismissed by the Tribunal vide its order dated: 27.05.1997.

3. Aggrieved of the orders of the Tribunal, the Insurance Co. came to prefer this appeal on 24.07.1997 alongwith the Misc. petition, titled above,

seeking condonation of delay in filing the appeal within the prescribed time.

4. Heard and at this stage the concern of the court is to dispose of the petition seeking condonation of delay which stems from the plea that after

the award was passed by the Tribunal, the Insurance company got the legal advice that review petition could be filed as the Tribunal was

competent to review its award in so far as the liability to pay was in its entirety attributed to the insurer, which according to the law applicable at

the particular time, had the limited liability. Put in other words, the jurisdiction under section 5 and section 14 of the Limitation Act, is invoked on

the planks that the delay in filing the appeal was primarily caused in the process of intimating the Company's Regional Office at Chandigarh as to

the filing of the appeal. There is the further plea that under the legal advice, the review jurisdiction of the Tribunal was invoked by filing the review

petition on 11.12.1996 which was decided by the Tribunal on 27.05.97, so the interim period having been spent in bonafide advice in a forum

which declined to redress the grievance needs to be excluded, while computing the period of limitation.

5. No objections to the condonation of delay have been filed but the claimants have come to resist the application on the plank that the

extraordinary delay in preferring the appeal cannot be excused as the insurer/ appellant was not vigilant to invoke the jurisdiction within the

prescribed time and the time spent in prosecuting a misconceived petition of review before the Tribunal cannot be excluded.

6. The factural back drop is that the award was passed by the Tribunal on 30.10.96. The appeal against the award could be preferred within three

months there from but the aggrieved party, instead of filing the appeal, preferred the review petition whereby the attempt was made to invite the

attention of the Tribunal's Presiding Officer to the so called legal provisions that the Insurance Company could not, under the law applicable, be

burdened to pay the entire liability as such indemnifier. This review application was disposed of by the Tribunal on

27.05.97. More than five months time was thus spent by the aggrieved party before the Tribunal seeking redressal of its grievance. Exclusion of

this period that is from 11.12.1996 to 27.05.1997 is sought under Section 14 of the Limitation Act on the ground that it was under legal advice

that the review petition was filed and perused. The first question that therefore arises is whether it can be accepted that Tribunal could review its

own order and on that basis the period spent in perusing that course is worth exclusion while computing the period of limitation. There is no denial

of the fact that all the provisions of the Code of Civil Procedure do not apply to the proceedings in the claim cases before the Accident Claims

Tribunal, but it too is a fact that the Tribunal exercising jurisdiction under the provisions of Motor Vehicle Act, has the trappings of the civil court, in

that it can even in the absence of specific provisions thereto in the Motor Vehicles Act exercise powers available to a civil court under the Civil

Procedure Code as for example issue attachment orders for executing its decrees/ orders. It is contended for the appellant/petitioner that the

Claims Tribunal is invested with all the powers of a civil court which include the power to review its judgments. This contention is countered by the

argument that only those powers which are specified under Section 169 (2) of the Act as 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 are exercisable by the

Tribunal. The contention is that the Tribunal lacks the inherent powers of review which vests with a civil court by virtue of order 47 or Section 151

C.P.C.

7. True it is that the Claims Tribunal is not a court in as much as it is a creation of a special statute. It does not enjoy the status of a civil courts.

True it is that being not a civil Court, the Claims Tribunal cannot invoke inherent powers under section 151 C.P.C. Correct it is that the entire civil

procedure does not apply before the Claims Tribunal. Power to review is admittedly not inherent power but is conferred by law either specifically

or by necessary implication. The Claims Tribunal has, apart from the powers specified in the Act and the Rules, the power to act judicially in trying

the case of a civil nature and enforce the decisions rendered by it.

8. It is thus rightly contended that the provisions of Civil Procedure Code, the application of which is not explicitly excluded by or under the Act,

may be invoked by the Tribunal. Having attributes of the civil court, a Claims Tribunal has under the Act to make an award of compensation which

appears to it to be just and if due to a patent mistake of fact or law, the award is vitiated resulting in miscarriage of justice, Tribunal can review and

recall its order with a view to doing justice in a case by rectifying mistakes. Having all the trappings and the attributes of a civil court, the Tribunal

will have thus by necessary implication the inherent powers to correct and rectify patent errors of law. This is available apart from the statutory

jurisdiction to correct and rectify any error committed by the Tribunal. Precendents are available to hold that a Claims Tribunal has the jurisdiction

to review or recall its orders to rectify patent error of law or fact.

9. The argument is that Insurance Co. admittedly laid the petition before the Tribunal to get the alleged error of law namely, liability of the insurer to

pay the entire liability under the award, rectified as according to the insurer, the liability was upto a fixed amount under the contract of insurance

read with the law applicable. If any error or mistake had been committed by the Tribunal in ignoring the law, under which the liability of the Insurer

was determined, then it can be said that this was a mistake or error of law on the fact of record which could have been corrected or rectified by

the Tribunal in exercise of its review jurisdiction. The time thus spent in the Tribunal in invoking its review jurisdiction can be legally excluded u/s 14

of the Limitation Act, as the principle of Section 14 can be applied in matters of appeals against the awards passed by the Claims Tribunals. The

respondent's contention, that the time spent in seeking review of the award was not bonafide so it cannot be excluded, has to be repelled. The

appellant petitioner had 90 days, time to file appeal against the award passed on 30.10.96. The last date of filing the appeal was thus 31.01.1997.

Instead of filing the appeal within the available period, the insurer filed the review petition on 11.12.1996 which got decided on 27.05.1997. This

period is said to have been spent in perusing in good faith, the review petition. The tribunal was possessed of the review jurisdiction, so it cannot

be said that resort to the review jurisdiction ,was misconceived or ill founded. Section 14 of the Limitation Act, which though dose not expressly

apply to the claims tribunals nonetheless can be resorted to on a matter of principle to determine whether the period spent by the Insurance Co. in invoking the review jurisdiction of the tribunal can be excluded. Section 14 above said provides that in computing the period of limitation

prescribed for any suit or application the time during which the party had been prosecuting due diligence any other civil proceedings between the

same parties and for the same relief shall be excluded where such proceeding is prosecuted in goodfaith in a court which for. lack of jurisdiction or

other cause of like nature, is unable to entertain it. On principle it can be said that the time spent in prosecuting the review petition before the

Claims Tribunal in goodfaith for rectification of alleged error of law can be excluded provided it is shown that the time so spent was spent in

goodfaith. Goodfaith is defined under the Limitation Act, Section 2 (7) as:

nothing shall be deemed done in good faith which is not done with due care and attention.

10. On the bare perusal of the relevant provisions, it can be said that if any taint of malafidies or element of recklessness or ruse is not present, then

the prosecution of an application before the Tribunal can be said to be sufficient cause for exclusion of the time, from prescribed period of

Limitation, that the time spent in the prosecution of such an application as of review.

11. The question of limitation, whenever or wherever, arise have to be approached in a manner which may advance the cause of justice and not to

perpetuate injustice. Liberal approach has to be adopted in condoning the delay in invoking jurisdiction for judicial review through appeal.

Ordinarily a litigant does not stand to benefit by lodging an appeal late nor is there any presumption that delay is occasioned, deliberately or on

account of culpable negligence or on account of malafides. Substantial justice and technical considerations when pitted against each other must

caution the judiciary that it is not proper to refuse to do justice on the technical grounds. Refusal to condone delay can at times results, in

meritorious matters being thrown out and the cause of justice being defeated. When delay is condoned, the highest that can happen is that a cause

would be decided on merits after hearing the parties. The ends of justice will be met and the cause of justice enhanced if cause is decided on merits

and not on technical considerations.

12. In the case at hand there has been apparently a delay of nearly 12 days,

after excluding the period spent by the applicant in prosecuting the

review application from 2751997 to 24797 in lodging the appeal. The applicant is the Insurance Co. which has been burdened to pay nearly four

lacs, the award amount and the interest as compensation on account of the indemnification liability emanating from the contract of insurance. We

cannot be oblivious to the factual aspect that in the present setup with the Insurance Co, and the bureaucratic methodology in pushing files by a

note making process etc., the delay is occasioned by impersonal approach. The courts, therefore, have to keep in view the spirit and philosophy of

the provisions in interpreting legal commands qua condonation of delay.

13. I am of the considered opinion that here in this case, where a question of law appears to be involved as to the Insurance Company's liability,

and it demands determination on merits and not on the technicality on limitation the grounds exist to sustain the plea that the time beyond the

prescribed period has been spent in goodfaith while prosecuting the review petition before the Tribunal, which, as said above, had the jurisdiction.

I would, therefore, in the totality of the circumstances, exercise the powers and condone the delay in filing the appeal.

For what has been said above, the CMP stands allowed. The delay is condoned. Appeal be listed for consideration on admission on a date to be

fixed by the Registry.

