

(1977) 12 AHC CK 0045

In the Allahabad High Court

Case No : F.A. No. 29 of 1969 & First Appeal No. 29 of 1969

Premier Insurance Co. Ltd.

APPELLANT

Vs

Smt. Vidyawati and Others

RESPONDENT

Date of Decision : 05-12-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 7
Motor Vehicles Act, 1939 — Section 110F

Citation : AIR 1978 All 264

Hon'ble Judges : B.N. Sapr, J

Bench : Single Bench

Advocate : K.P. Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Sapr, J.—The appellant in this appeal is M/s. Premier Insurance Co. Ltd, which is a company registered under the Companies Act.

2. Sri Mano Ahmad was the owner of a motor truck No. UPC 6603 and Sri Manzoor was its driver. The vehicle was insured with the appellant.

3. On 4th August, 1965 one Sri Ambresh Kumar elder son of plaintiff No. 1, namely Smt. Vidyawati and the elder brother of the remaining plaintiff was going on his cycle on the left side of the Vivekanand Marg, formerly known as Hewette Road, Allahabad. The aforesaid truck was also passing that way and came from behind and dashed against Sri Ambresh Kumar Mathur, as a result of which he was knocked down from the cycle and received serious injuries to his person. His cycle was also badly damaged. Thereafter Sri Ambresh Kumar Mathur was taken to the Medical Hospital for treatment where he died as a result of the accident on 5th August, 1965. The plaintiffs alleged that the death was due to rashness and negligent driving of the said truck by defendant No. 2, who was driving the same while in the employment of defendant No. 1. As such, defendant, No. 1 is also liable for the damages suffered by the plaintiffs on account of the rash and

negligent act of defendant No. 2. On account of the death of the deceased, the plaintiffs, who are his dependants and successors, have suffered a loss because at the time of his death the deceased was maintaining and supporting the plaintiffs. Hence the suit was filed for recovery of Rs. 20,000/- as damages.

4. The suit has been decreed for a sum of Rs. 9,000/- as against the defendants. It has also been directed that the decree will be satisfied by the appellant.

5. Before the trial court a preliminary objection was taken on behalf of the appellant to the maintainability of the suit.

6. The accident had taken place on 4th Aug., 19-65, and the deceased Sri Ambresh Kumar Mathur died on 5th Aug., 1965.

7. The suit was filed on 5th Aug., 1966 with an application for leave to sue as a pauper. A Motor Accidents Claims Tribunal was constituted under U. P. Government Notification No. 188 (1) DST/XXX-B-59-DST-66 dated 7-3-1967, which was published in the U. P. Gazette dated 18-3-1963. This notification was issued u/s 110 of the Motor Vehicles Act, 1939. The next material date is 12th Aug. 1967 on which permission was granted to the plaintiff to sue as paupers.

8. The objection to the jurisdiction taken by the appellant was led to the framing of issue No. 6 in the suit. Issue No. 6 was as follows:

"Whether the Court has no jurisdiction to try the suit in view of the notification dated 7-3-67."

This issue was tried as a preliminary issue. Before the Civil Judge the argument on behalf of the appellant was that permission having been granted to the plaintiff to sue as paupers only on 12-8-1967 the suit must be deemed to have been instituted on that date and, therefore, as the Motor Vehicles Claims Tribunal had also come into existence on that date the Civil Court could not entertain the suit. This application was rejected by the trial court. The trial court's view was that though till the date when the application to sue as pauper was allowed the plaint is not registered as such, but for all practical purposes the plaint is taken as having been filed on the date it was originally filed.

9. The learned counsel for the appellant has contended before me that the Motor Vehicles Accidents Claims Tribunal having come into existence on 7th March, 1967 the suit ceased to be maintainable in a civil court as from that date even though the accident had taken place on 4-8-1965, and the suit along with an application to sue as pauper had been filed on 5th August, 1966. In support of this proposition he has relied upon a Division Bench judgment of this Court in the case of Devendra Kumar Gupta Vs. The Pilokhri Brick Kiln, . In that case the accident took place on 9th June, 1966 as a result one Arun Kumar Gupta died. A suit for compensation was instituted on 24th May, 1967. Before the institution of the suit the Government had issued a notification dated 22-4-1967 constituting a Motor Accidents Claims Tribunal in the district of Meerut where the accident had taken place. Before the Civil Court an objection was taken in view of the fact that

the Claims Tribunal had been constituted, the Civil Court had no jurisdiction to entertain the suit. The objection was upheld and the Civil Court rejected the suit.

10. Subsequently on 28th Feb., 1968 an application claiming compensation was filed before the Claims Tribunal, where it was pleaded on behalf of the defendants that the Tribunal had no jurisdiction to try the matter as the accident had taken place prior to the constitution of the Tribunal. In support of this plea reliance was placed upon a Single Judge's decision of this Court in the case of *The New India Assurance Co. Ltd. and Others Vs. Smt. Shanti Misra and Others*, . Following this decision the Claims Tribunal rejected the application for compensation. Aggrieved by the order Devendra Kumar Gupta filed an appeal which came up before the Division Bench. The Division Bench has observed in para 12 of its judgment as follows:

"The question which requires consideration is whether the existence of the Claims Tribunal on the date of the occurrence of the accident is a requisite condition for the entertainment of a claim by the Tribunal. In order to determine the jurisdiction of a statutory tribunal, the court has to examine the language of the provisions and give effect to its natural meaning. u/s 110(1), the State Government is empowered to constitute a Claims Tribunal for a specified area for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons, arising out of the use of motor vehicles. The provision does not curtail or qualify the classes or categories of claims which the Claims Tribunal could adjudicate. All claims for compensation in respect of accidents involving death or bodily injury are within the purview of the Tribunal. There are no express words, nor do the used words raise an implication of any restriction as to the time of the occurrence of the accident, before the claim for compensation in relation to it could be within the jurisdiction of the Tribunal. This provision does not postulate that the accident must occur after the establishment of the Tribunal in order to enable the Tribunal to adjudicate a claim for compensation relating to the accident. If the Legislature had intended to limit the jurisdiction of the Claims Tribunal to accidents occurring after its establishment, it would have said so. It has expressly said so in Section 110-F while debarring the jurisdiction of the Civil Court. The bar to the jurisdiction of the Civil Court was created from the establishment of the Claims Tribunal. A similar restriction might have easily been imposed in Section 110(1). But we find the Legislature using words of wide and general amplitude so as to bring within the purview of the Claims Tribunal claims in respect of accidents occurring prior to as well as after the constitution of the Tribunal."

11. The learned counsel for the appellant on the basis of this Division Bench decision submitted that the Tribunal had jurisdiction to take cognizance of a claim for compensation arising out of an accident which took place prior to the constitution of the Tribunal; the Civil Court's jurisdiction was ousted and it had no jurisdiction to entertain the present suit,

12. In the instant case the accident took place on 4th Aug., 1965 and the suit

had been filed on 5th Aug., 1966, along with an application to sue as a pauper. The question is whether the principles of Section 110-F of the Motor Vehicles Act would oust the jurisdiction of a Civil Court even in cases where a suit had been instituted prior to the constitution of a Claims Tribunal. Section 110-F of the aforesaid Act runs as follows s-

"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."

This section does not lay down that in cases where complaints had been filed, but no final decision had been given the Civil Court shall lose jurisdiction to entertain them. The word "entertain" has a well known connotation in law, meaning the first time a Court applied its mind to any matter. See *Janta Cycle and Motor Mart, Kanpur Vs. Asst. Commissioner (J), III Sales Tax Kanpur Range, Kanpur and Another*, . In cases where the court had already entertained a suit the bar u/s 110-F to the jurisdiction of a Civil Court will not apply,

13. The next question that arises is, whether the complaint would be deemed to have been presented on the date when it was filed along with an application to sue as a pauper or on 2-8-1967 when permission to sue as a pauper was granted. It has been held that when an application to sue in forma pauperis is granted, the suit shall be deemed to have been instituted on the date of the presentation of the application and not on the date when the application is allowed to sue as a pauper. (See *Yasoo Vithoba Vs. Babubai*, . Similarly where an application to sue in from a pauperis was made before the amendment of the Madras Court Fees Act, but was registered as a suit after the amendment, the amount of court fee to be entered in the decree was ordered to be calculated on the basis of the old Court Fees Act. See *Kaman Mada v. Malli* (AIR 1926 Mad 159). In this view of the matter the objection as to the maintainability of the suit has no merits and cannot be accepted.

14. No argument has been advanced before me to otherwise question the correctness of the trial court's judgment.

15. In the result, the appeal fails and is dismissed. As no one has appeared to oppose the appeal, there will be no order as to costs.