
(1981) 02 DEL CK 0026

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 966 of 1980 and First Appeal Order No. 111 of 1980

Premnath Motors (P.) Ltd.

APPELLANT

Vs

Bahadur Chand Dhawan and Others

RESPONDENT

Date of Decision : 24-02-1981

Acts Referred:

Citation : AIR 1981 Delhi 215 : (1981) 19 DLT 344

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : S.N. Anami, D.B. Kalia, Ashok Popli and P.P. Malhotra, for the Appellant;

Judgement

Sultan Singh, J.

(1) The respondent No. 1 Bhadur Chand Dhawan filed a claim under S.100-A of the Motor Vehicles Act, 1939 (hereinafter called "the Act") on December 23, 1969 before the Motor Accident Claims Tribunal. Initially the claim was against the driver Ashok Kumar and the owner of the Vehicle, M/s Prem Nath Motors (P) Ltd. Subsequently it appears that insurer was also made a party. The present appellant M/s. Prem Nath Motors was served and represented by a counsel. On September 25, 1979 the Tribunal allowed the claim of Bahadur Chand Dhawan and awarded Rs. 29.325.00 to the claimant against the driver and the appellant i.e. owner of the vehicle together with interest 6% per annum from the date of filing the claim petition till date. The claim against the insurance company was however dismissed. , The owner of the vehicle M/s. Prem Nath Motor filed the present appeal in this Court on March 1, 1980 together with the present application for condensation of delay in filing the appeal. The impugned order is dated September 25, 1979. The period of limitation for filing the appeal in question is 90 days for the date of judgment and order of the Tribunal. The appellant is also entitled to exclude the time spent in obtaining the certified copy of the impugned order. The copy was applied on February 1, 1980 i.e. after the

period for filing the appeal had expired. The learned counsel for the appellant states that the appellant was not aware of the impugned order till January 25, 1980. His case is that the order passed by the Tribunal was not known to the appellant and that the appellant came to know of it only when an official from Collector's office came for realization; an application for obtaining the Certified copy of the impugned order was made and the appeal was filed after obtaining the same. Learned counsel argues various matters relating to the merits of the case. I am afraid, I cannot go into the merits at this stage. Question for consideration is whether there is sufficient cause for condensation of delay in filing the appeal. The appellant was served and filed a written statement. On August 27, 1979 the Tribunal" has noted the presence of the counsel for the parties and the case was adjourned to September 7, 1979 on which date parties counsel were again present and the case was adjourned to September 20, 1979, The case was finally adjourned to September 25, 1979 on which date the record shows that counsel for the petitioner claimant was present and order was announced on that date. From the order sheet of the Tribunal record it seems that the counsel for the parties were present when the case was adjourned. Order 20 Rule I of the CPC provides that the Court has to pronounce judgment in the open court and that notice of that is to be given to the parties. In the present case" from the record it appears that counsel for the parties were present and in their presence the case was adjourned from time to time but it appears that on the last date when judgment was pronounced no body was present on behalf of the appellant. When the date has been fixed for pronouncement of judgment in the presence of the counsel for the parties it seems that no further notice is required to be served upon the parties. Further once a defendant is served and he appears before court he is not entitled to. be served with any fresh notice fixing a date for pronouncement of judgment. The period of limitation as already is 90 days which expired on December 24, 1980 and up to that date no step was taken by the appellant for filing the appeal. Section 5 of the Limitation Act reads as: under:

"Any appeal or any application other than an application under any of the provisions of Order Xxi of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

(2) Sufficient clause has to be explained for not filing the appeal on the last date of limitation and thereafter day by day till actual filing of the appeal. In the present case even application for obtaining the certified copy was not made within the period of limitation. In other words it means that the limitation for filing the appeal expired. There is no Explanation as to why no step was taken during the period from September 25, 1979 to February 1, 1980. The

onlyExplanationas stated above is that the appellant was not aware of the impugned judgment and order dated September 25, 1979 and that it came to know of the same on January 24, 1980. There is noExplanationagain why no application for obtaining the certified copy was not made during the period from January 25, 1980 to January 31, 1980. There is no sufficient cause for condensation of delay. The application has no merit and Therefore the same is dismissed.

(3) This appeal is dismissed being barred by time.