
(1973) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 46 of 1970

Pritpal Singh and Others

APPELLANT

Vs

New Suraj Transport Co. (P) Ltd. Amritsar and Others

RESPONDENT

Date of Decision : 28-03-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Punjab Motor Accidents Claims Tribunal Rules, 1964 — Rule 19, 20, 21

Citation : AIR 1974 P&H 39

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

1. This appeal has been filed against the judgment and award of the Motor Accidents Claims Tribunal Amritsar (hereinafter referred to as the Tribunal"). Date February 26, 1970, by which the claim application was dismissed.

2. The facts giving rise to this appeal are that Didar Singh, aged about 50 years, working as Deputy Superintendent of Police, was going from Amritsar to Ajnala on a scooter on November 2, 1968. When he had travelled a distance of one kilometre from Adda Kugranwala, a truck bearing No. PNA-6954 collided against him. It was being driven rashly and negligently by Garibu (Respondent No. 2) at that time. Didar Singh received serious injuries on account of the accident on chest, head, face and skull and became unconscious. He first removed to Ajnala Dispensary from where he was advised to be taken to V.J. Hospital. When he was being taken to he hospital, he passed away in the way. New Suraj Transport Company (Respondent NO. 1) was the owner of the truck and it was insured with Concord of India Insurance Company (Respondent No. 3). At the time of his death, the deceased was drawing salary at the rate of Rs. 900/- per mensem. The petitioners who are sons and daughters of the deceased filed the claim for recovery of Rs. 1,00,000/- on October 21 1969. The claimants Nos. 1 to 4 are majors whereas claimants Nos. 5 to 7 are the minor children of the deceased. The claim application was opposed by the respondents. They inter alia pleaded that as the occurrence took place on November 2, 1968 and the claim application

was filed on October 21, 1969, therefore it was barred by limitation. The Tribunal held that the claim application was barred by limitation and there were no good grounds to condone the delay. Consequently, it dismissed the claim. The claimants having felt aggrieved against the judgment and award of the Tribunal have come up in appeal to this Court.

3. A preliminary objection has been raised by the learned counsel for the respondent No. 3 that the appeal is not maintainable in the present case as a copy of the award has not been filed. He submits that it was necessary for the appellants to have filed a copy of the award along with the copy of the judgment. He also submits that the copy which has been filed with the memorandum of appeal is of the judgment and not of the award. I have heard the contention of the counsel for the respondent and find no force in it. The appeal is maintainable u/s 110-D of the Motor Vehicles Act, 1939(hereinafter referred to as "the Act") wherein it is provided that, subject to the provisions of sub-section (2) any person aggrieved by the award of a Tribunal may within 90 days from the date of the award prefer an appeal to the High Court Section 111-A of the Act confers powers on the state Government may make rules which provides that the State Government may make rules regarding the form and manner in which the appeal should be preferred against an award of the Tribunal The State of Punjab framed rules under the aforesaid section in 1964 which are known as the Punjab Motor Accidents Claims Tribunal Rules 1964(hereinafter referred to as "the Rules"). Rule 19 says that the Tribunal, in passing orders shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid. In Rule 20, provisions of the CPC that are applicable to the proceedings before the Claims Tribunal have been given. By the aforesaid Rule. Order XX and Order XLI have not been made applicable Form and manner of appeals against the award of the Tribunal have been given in Rule 21. which is as follows:--

"21. Form and manner of appeals against the award of Claims Tribunal:

An appeal against the award of a Claims Tribunal shall be preferred in the form a memorandum stating concisely the grounds on which the appeal is preferred. It shall be accompanied by a copy of the judgment and the award appealed against."

The emphasis has been laid by the learned counsel for the respondent on the fact that in the aforesaid rule, it is stated that the memorandum of appeal shall be accompanied by a copy of the judgment and award appealed against. Relying on the aforesaid phraseology his contention is that the award is not the same thing as judgment and both should accompany the memorandum of appeal. The word "award" has not been defined in the Act. The learned counsel for the respondent says that award is the same thing as a decree as defined in the Code of Civil Procedure. In support of his contention, he relies on a Full Bench judgment of this court in Shanti Devi and Others Vs. General Manager, Haryana

Roadways, Ambala and Others, . Wherein it has been stated that it is apparent from the perusal of the rules that the word "award" has been used synonymous with the word "decree" and it has not been used to convey the meaning that the proceedings before the Claims Tribunal are in the nature of arbitration proceedings. The question for determination before the Full Bench was as to whether an appeal was maintainable under clause 10 of the Letters Patent against the decision of a learned Single Judge of the High Court in appeal filed against the award of the Motor Accidents Claims Tribunal u/s 110-D of the Act. In interpreting clause 10 of the Letters Patent, these observations were made by the Full Bench. It is not stated that the award shall be prepared in the same way in which the decree is prepared. The judgment and the award may be contained in the same document. A reading of Rule 19 shows that the Tribunal while passing order shall record concisely the findings on each issue framed and the reasons for such findings. This part of the order may be called a judgment. It is further provided that it shall make an award specifying the amount of compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid. The part of the order which contains the aforesaid finding, it appears, will be termed as the award. It is not necessary that a separate document shall be prepared which may contain the amount of compensation to be paid by the insurer and also the names of person or persons to whom compensation shall be paid and that document is to be termed as an award. The word "decree" has been defined in sub-section (2) of Section 2 of the CPC and what the decree has to contain has been provided in Rule 6 of Order XX of the Code of Civil Procedure. Sub-rule (1) of Rule 6 of Order XX says that the decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and the particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. In sub-rule (2) of Rule 6 of Order XX it is stated that the decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid. Rules 9 to 18 of Order XX of the CPC pertain to decrees that are to be prepared in different type of cases. The forms of decrees are provided in Appendix "D". The aforesaid provisions of the CPC have not been made applicable to the proceedings before the Tribunal. It appears from the aforesaid rules that it is not necessary that a separate award in the form of a decree should be prepared by the Tribunal. If that had been the intention, that would be specifically stated in the Rules and the Act. The word "award" has not been defined either in the Act or in the Rules. In case it has not been defined its ordinary dictionary meaning shall have to be taken into consideration for interpreting it. "Award" has been defined in the Shorter Oxford English Dictionary. Third Edition as "(1) A sentence or decision after examination. esp. that of an arbitrator or umpire: the document embodying it (2) That which is awarded or assigned as payment, penalty etc." In Webster's New Twentieth Century Dictionary, Second Edition. "Award" has been defined as "(1) a judgment. sentence, or decision: (2)..... (3) something awarded." In Black's Law Dictionary the definition of the word is as follows: "the decision or

determination rendered by arbitrators or commissioners, or other private or extra-judicial deciders, upon a controversy submitted to them." The aforesaid definitions show that the award is the decision of the Tribunal or the arbitrators upon a claim. The learned counsel for the respondent refers to the memo of costs prepared by the Court and states that it was an award and a copy thereof should have been annexed with the appeal. This contention of the learned counsel for the respondent has no force. The memo of costs has not been provided in the Rules. It only gives the details of the expenses that a party can claim on account of costs. It cannot be termed as an award. According to sub-rule (2) of Rule 6 of the Order XX. the costs have to form part of a decree but it is not necessary that the costs shall be a part of an award. In the present case, the claim application has been dismissed. The order of dismissal is the award in the case. Both the judgment and the award are incorporated in the same document dated February 26, 1970. For the reasons given above. I do not find any merit in the preliminary objection of the learned counsel for the respondent and reject the same.

4. The first contention of the learned counsel for the appellants is that appellants 5 to 7 are the minor daughters of the deceased and they are entitled to the benefits of Section 6 of the Limitation Act, 1963 and could file the claim within the same period after the disability had ceased as would otherwise have been allowed from the time specified therefore in the Act. He submits that as the aforesaid appellants are still minors, therefore their claim cannot be dismissed as barred by limitation. There is force in the contention of the learned counsel for the appellants. Sub-section (2) of Section 29 of the Limitation Act, 1963 provides that the provisions contained in Sections 4 to 24 shall apply to all enactments if they are not expressly excluded by such Act. The aforesaid Section is as follows:--

"29 Savings. (1) xx xx xx

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24(inclusive) shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

(3) xx xx xx xx (4) xx xx xx xx" Sub-Section (1) of Section 6 of the Limitation Act permits the minors to institute the suite after the disability has ceased within the period of limitation that is prescribed in the third column of the Schedule. The aforesaid sub-section is as follows:--

"6. Legal disability.

(1) Where a person entitled to institute a suit or make an application for the

execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

(2) xx xx xx xx (3) xx xx xx xx (4) xx xx xx xx (5) xx xx xx xx Explanation. xx xx xx"

5. The learned counsel for the respondent has submitted that sub-section (1) of Section 6 of the Limitation Act applies to suits and not to claim applications and that the periods of limitation are extended only in such cases which are provided in the Schedule to the Limitation Act. The word "suit" has not been defined in the Limitation Act, 1963. The suit according to Section 26 of the CPC is instituted by the presentation of plaint or in such other manner as may be prescribed. Sub-section (2) of Section 29 of the Limitation Act 1963 clearly provides that the provisions of Sections 4 to 24 apply to all enactments. It means that the aforesaid provisions are also a part of the Act. The main question for determination is whether the claim filed by the appellants fall within the definition of the word "suit" u/s 6 of the Limitation Act. "Suit" has been defined in Webster's New Twentieth Century Dictionary Second Edition as "an act or an instance of suing or seeking by entreaty; solicitation; a petition; as to make suit to the King:". In Shorter Oxford English Dictionary, the definition of the word is "the action of suing in a Court of law, legal prosecution; a process instituted in a Court of Justice for the recovery or protection of a right, the enforcement of a claim or the redress of a wrong." In a case where recovery is to be made on account of some injury or death under the Act, and application is to be filed in Tribunal. The application will be in the nature of a suit. It cannot be said that Section 6 of the Limitation Act will apply only to the suits under the CPC and not to similar proceedings under other enactments.

6. The next question that arises is as to whether Section 6 of the Limitation Act, 1963 is applicable to such cases the limitations of which are provided in the Schedule or it applies to other cases also of which the limitation is not provided in the Schedule. Sub-section (2) of Section 29 of the Limitation Act provides that where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were prescribed by the Schedule. As the Schedule is amended by virtue of sub-section (2) of Section 29 by the provisions of the Act, the claim application can be dismissed u/s 3 of the Limitation Act, if it is not filed within the limitation prescribed by the Act. The limitation provided under the Act will be taken to be a part of the Schedule for the purposes of Section 6 of the Limitation Act. The provisions of Limitation Act are to be construed strictly that is in favour of the right to proceed. The Courts should avoid such a construction that destroys a valuable right to sue. Therefore, the minors are entitled to the benefit of the provisions of Section 6 in filing the

claims under the Act. The learned counsel for the respondent has placed reliance on N. Sriramamurthi Vs. N. Sooramma and Others, , wherein it has been observed that in construing statutes of limitation equitable considerations or principles of natural justice were out of place and that a decision had to be reached on interpreting the language of the section. There is no dispute about the aforesaid proposition. In the present case, I have already held that Section 6 of the Limitation Act is applicable to the present case and my decision is not based on equitable consideration but on interpretation of the statutes. In the circumstances the respondent cannot derive any benefit from the aforesaid observations of the Division Bench in N. Sriramamurthi's case. The facts of that case were also different. The learned Judges were interpreting Section 6 of the Limitation Act, 1908 and Section 48 of the Code of Civil Procedure. It was provided by Section 29 of Limitation Act, 1908 that the provisions contained in Sections 4. 9 to 18 and 22 would apply only in so far as and to the extent to which they were not expressly excluded by such special or local law and that the remaining provisions of that Act would not apply. Now, the Legislature has amended the aforesaid section in the new Limitation Act. Section 48 of the CPC has also been omitted by Section 28 of the Limitation Act, 1963. In the circumstances, the ratio in that case will not be applicable to the present case. The view which I have taken finds support from a Divisions Bench judgment of Madhya Pradesh High Court in Hayatkhan and Others Vs. Mangilal and Others, wherein it has been observed as follows:--

The word "suit" occurring in Section 6 is capable of having a very wide connotation and may include any legal proceedings commenced by one person against another in order to enforce civil rights. The provisions of Section 6 of the Limitation Act, 1963 were therefore applicable to applications for compensation u/s 110-A of the Motor Vehicles Act, 1939, which were in the nature of a suit."

7. Another contention that has been raised by the learned counsel for the respondents is that the Act has got its own peculiarities and it does not require that all the legal representatives of the deceased be included in a claim application, Petition by one of the claimants is sufficient. He, therefore, urges that if the claim application by appellants 1 to 4 is barred by limitation, the claim of the other appellants should be rejected as barred by time. He further urges that the claim by one of the legal representatives is in the form of a representative claim and if that is barred by limitation the other claimants cannot take benefit of their minority. This contention of the learned counsel for the respondent has no force. It may be that some claimants are treated to be representative of others for some purposes. It however, cannot be said that the claim of the minors should be dismissed on the ground that the claim of the majors is held to be barred by limitation. The learned counsel has placed reliance on Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others, , wherein it has been observed that an application made by one or more heirs of the deceased is maintainable even if other heirs are not impleaded. It is further observed that in such cases the power of the Tribunal is not limited to awarding compensation in

favour of the applicants or to the extent of their shares. The aforesaid observations do not help the contention of the learned counsel. They do not say that each claimant has not an independent right to file claim application, and dismissal of the claim of one person will also amount to dismissal of the claims of the other persons. The Tribunal, however, in an application by some is entitled to grant relief to other legal representatives as is clear from the language of Section 110-A of the Act. The proceedings before the Tribunal are in the nature of summary proceedings. The learned counsel for the respondent has also referred to the observations of the Division Bench of this Court in *Northern India Transporters Insurance Co. Ltd., Jullundur v. Smt. Amra Wati* AIR 1966 P&H 288 wherein it has been observed that a claim, which arises out of the Act, is to be made on behalf of the heirs mentioned in it. It is further observed that, merely because the names of the daughters were brought into the proceedings at a later stage, there is no justification for excluding the compensation payable to them on the ground that their claim was belated. The aforesaid case has been decided on the same reasoning on which *Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others*, was decided by the Calcutta High Court. Those observations are not applicable to the facts of the present case. School Certificates of appellants 5 to 7. Exhibits A-1 to A-3 respectively, show that they were minors on the date of institution of the claim. The Tribunal on the basis of the said evidence held that they were minors. It however, observed that the period of limitation prescribed for making an application for compensation is 60 days for all persons including the minors. It further held that the claimants-appellants have to explain each day's delay in filling the application late and that the appellants failed to do so. Consequently their claim was dismissed by it. The Tribunal has not properly appreciated the law regarding claim of the minors and erred in holding that they are not entitled to the benefit of provisions of Section 6 of the Limitation Act, 1963. Their claim could not be dismissed on that ground as they are entitled to get the period of limitation extended on the basis of Section 6. The question whether the minors are entitled to condonation of delay in the present case under proviso to sub-section (3) of Section 110-A of the Act does not arise. The learned counsel for the appellants has expressed his inability to challenge the finding of the Tribunal that the appellants 1 to 4 are not prevented by sufficient cause from making the claim in time.

8. For the reasons recorded above. I partly accept the appeal and remand the case of appellants 5 to 7 to the Tribunal for decision on merits. In view of the partial success of the appeal. I leave the parties to bear their own costs.

9. Appeal Partly allowed.