
(1999) 06 GAU CK 0027
In the Gauhati High Court
Case No : Civil Revision No. 40 of 1997

Rajib Bhattacharjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 25
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 158, 166, 169, 173, 176

Citation : (2000) ACJ 1336 : (1999) 2 GLT 597

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Judgement

H.K.K. Singh, J.—Heard Mr. D. Chakraborty, the learned counsel appearing on behalf of the petitioner and Mr. K.N. Bhattacharjee, the learned Senior Central Government Standing Counsel appearing on behalf of the respondents.

2. The petitioner herein filed an application claiming compensation for the death of his predecessor who died on 12.8.1987 in a motor accident. The said claim petition was filed on 31.8.1996 with an application for condonation of delay in filing the claim petition before the Member, Motor Accidents Claims Tribunal, North Tripura, Kailashahar. The same was registered as Title Suit (MACT) No. 18 of 1996.

3. After hearing the petitioner, the learned Member, Motor Accidents Claims Tribunal rejected the application for condonation vide his order dated 24.5.1997 holding that the condonation application is barred by limitation and as such not maintainable as no ground for delay was given. The petitioner has come to this court challenging the aforesaid order of the Member, Motor Accidents Claims Tribunal by filing the present petition u/s 115 of Civil Procedure Code.

4. In course of hearing, the learned counsel of both the parties have submitted various decisions of different High Courts on the point as to whether the petition u/s 115 of CPC will be held maintainable before this court against an order

passed by the Motor Accidents Claims Tribunal.

5. Even the learned counsel for the petitioner has cited two decisions of the Supreme Court. In the case of *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC), the Apex Court held that provision of Order XXXIII of Civil Procedure Code. should be made available so that indigent persons may claim for motor accident claims without paying any court fees and further the Apex Court observed that the appropriate legislation was to be framed to enable the claimants to file compensation petition without payment of court fees.

6. In the second case, i.e., in the case of *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123 (SC), the Apex Court following the decision passed in the former case, i.e., *Darshana Devi* 1979 ACJ 205 (SC), held that the provision of Section 25 of the CPC was held applicable and as such the Supreme Court transferred a case pending in a Tribunal at Moradabad to another Claims Tribunal at Delhi in exercise of powers u/s 115 of Civil Procedure Code.

7. Further, the learned counsel of both sides have submitted, as stated above, the decisions of various other High Courts passed in different cases holding that certain provisions of CPC are applicable whereas some other High Courts passed orders holding that provisions of CPC are not strictly applicable.

8. Motor Accidents Claims Tribunals constituted under the Motor Vehicles Act are not court, but they have the trappings of the court. Powers of the Tribunal are conferred and defined by the statute and the procedure to be followed by the Tribunal and the procedures are also prescribed by law, or in absence thereof in the statute, the Tribunal regulates its own procedure. Section 169 of 1988 Act describes the powers and procedure of the Tribunal and again u/s 176 the State Government is empowered to make rules for the matters as mentioned in the section. But even if the Tribunals are exercising powers of civil court or the same procedures prescribed under Civil Procedure Code, the Tribunal constituted under Motor Vehicles Act is still a Tribunal and not a civil court. Again, rules and revision are matters of statute. The appellate and revisional power cannot be assumed or presumed in absence of any specific provisions in the statute. But, I am not inclined to delve into the matter regarding the point as to whether Section 115 of CPC is applicable in respect of an order passed by Claims Tribunal for the reasons stated below.

9. In the present case, as stated above, the accident took place on 12.8.1987 and the claim petition along with an application for condonation was filed on 31.8.96. Admittedly, taking into consideration the date of accident, as provided for u/s 110-A (3) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), a condonation application for filing of the claim petition was available if the application could not be made within the period of six months from the date of accident. But on coming into force of the Motor Vehicles Act, 1988 with effect from 1.7.1989 the period of limitation for the claim petition was preserved as six months from the date of occurrence, again condonation application could be filed

within a further period of six months after expiry of the aforesaid six months period under Sub-section (3) of Section 166 of 1988 Act. But the aforesaid provision of Sub-section (3) of Section 166 was deleted by the Amendment Act No. 54 of 1994 with effect from 14.11.1994.

10. Now the question is whether the claim petition in the present case which was filed on 31.8.1996 in respect of motor accident which occurred on 12.8.1987 will be held to be barred by time and if so any condonation petition may be filed. The matter is no more *res Integra* in view of the recent decision of the Supreme Court in *Dhannalal Vs. D.P. Vijayvargiya and Others*, The Apex Court considering the other provisions of law enacted by the aforesaid Amendment Act particularly the new provision of Sub-section (6) which was added to Section 158 of 1988 Act, held that after coming into force of this Amendment Act from 14.11.1994 there is no period of limitation for filing claim petition in respect of motor accident. The relevant portion of para 7 of the judgment is reproduced herein:

In this background the deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Apex Court. The present appeal is one such case. The appellant has been pursuing from Tribunal to this court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994, in respect of the accident which took place on 4.12.1990, in view of the Amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this court cannot be thrown out on the ground of limitation.

11. As the law on the subject has been declared by the Apex Court, the impugned order passed by the Member, Motor Accidents Claims Tribunal, North Tripura, Kailashahar has to be quashed. Again the impugned order disclosed that as the condonation application stands rejected the claim petition also stands dismissed as time-barred. Rejecting of an application praying for award may also come within the fold of appeal u/s 173 of the Motor Vehicles Act.

12. Accordingly, the impugned order dated 24.5.1997 passed by the learned Member, Motor Accidents Claims Tribunal stands set aside and quashed in exercise of power conferred u/s 173 of the Motor Vehicles Act read with Article 227 of the Constitution of India. The matter is now remitted to the learned Member, Motor Accidents Claims Tribunal, North Tripura, Kailashahar who is directed to hear the matter on merit. As the matter is old one the learned Member of the Claims Tribunal is further directed to dispose of the matter at the earliest.

13. The petition stands disposed of. Send down the records along with a copy of this judgment immediately.