
(1997) 05 MP CK 0066
In the Madhya Pradesh High Court

Rakesh Kumar

APPELLANT

Vs

Shambhu Singh and Others

RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Limitation Act, 1963 — Section 5, 6
Motor Vehicles Act, 1988 — Section 158, 166

Citation : (1998) 2 ACC 508 : (1998) ILR (MP) 496

Hon'ble Judges : R.D. Shukla, J;J.G. Chitre, J

Bench : Division Bench

Judgement

J.G. Chitre, J.—Appellant, the victim of the accident who sustained disability in accident which took place on 21.2.1982 on account of rash and negligent driving of the truck by respondent No. 1, the driver of respondent No. 2 owner of the truck bearing No. MPO-2129, is hereby challenging the correctness, propriety and legality of the order passed by MACT Jaora dated 9.12.1994 by which the learned Member of the Tribunal dismissed the application of the appellant praying for condonation or delay in filing the claim petition.

2. The record shown that on 21.2.1982 at about 12.30 p.m. the appellant was standing on Neemuch-Mhow road waiting for the bus holding a gunny bag containing ground-nuts. The respondent No. 1 arrived there driving the said truck and on account of acquaintance gave lift to the appellant in the said truck by accepting of Rs. 5/-. After the appellant sat in the said truck, the said truck turtled on account of rash and negligent driving by respondent No. 1. The appellant sustained injuries more particularly on right hand, right leg, chest, waist, head, face and nose. He became unconscious on account of those injuries. Now the result of those injuries is disability to the appellant. The appellant after attaining majority filed the claim petition on 14.1.1992, which was objected to by the respondents contending that there has been abnormal delay in filing the claim petition.

3. The learned Tribunal held that the claim petition has been filed beyond the

period of limitation and therefore, it was hit by provisions of Section 166(3) of Motor Vehicles Act. For justifying this conclusion, the learned Member of the Tribunal pointed out the discrepancy in the contentions of the appellant and the affidavit of his mother Sohanbai. The learned Member pointed out that the person who prepared the horoscope was not examined though his name has been disclosed to be one Bansidar Sharma. The learned Member pointed that the appellant was not entitled to get the delay condoned on account of such infirmities. He held that the appellant attempted to get the benefit of provisions of Sections 5 and 6 of the Limitation Act improperly, mala fide. He not only dismissed the application of the appellant for condonation of delay but saddled him with cost of Rs. 251 /-.

4. Learned Counsel Mr. J.K. Joshi appearing for the appellant and Mr. R. Sugandhi for the respondents were heard.

5. The learned Member of the Tribunal has taken a totally wrong approach and has ignored the benevolent spirit of the enactment of Motor Vehicles Act so far as claims arising out of motor accident are concerned. The learned Member also ignored the benevolent spirit behind the various amendments introduced by the Legislature. It has been held that this Court in the matter of Chandrakant Soni v. Mukesh Sahu and Ors., 1996 ACJ 678 : 1 (1996) ACC 476 (SC) that the benefit of deletion of provisions of Sub-section (3) of Section 166 should be given to the claimants keeping in view the benevolent spirit behind the enactment and delay should be condoned. This Court pointed in the said judgment that the amendment which has been brought in force in the year 1994 is the benevolent step taken by the Legislature in favour of claimants of motor accidents and that has been specially brought in force for the purpose of avoiding hardship and delay in getting the relief in context with motor accidents.

6. The Supreme Court had held in the matter of Dhannalal Vs. D.P. Vijayvargiya and Others, that from the Amending Act, it does not appear that said Sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act to show that benefit of deletion of Sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose, an accident has taken place two years before 14.11.1994 when Sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or heirs of victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of said accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of 12 months which had been prescribed when Sub-section (3) of Section 166 was in force having expired, the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section 166 w.e.f. 14.11.1994 ? The Supreme Court observed that according to it, the answer should be in negative. It was held that when Sub-section (3) of

Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force. If the victim of the accident or the heirs of the deceased victim can prefer a 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 worse position if the question of condonation of delay in filing the claim petition is pending before the Tribunal or the High Court or the Supreme Court. It need not be impressed that Parliament from time-to-time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victim die. One such amendment has been introduced in the Act by the aforesaid Amendment Act 54 of 1994 by substituting Sub-section (6) of Section 158. In view of Sub-section (6) of Section 158 of the Act, the Officer in-charge of Police Station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the concerned insurer. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the claimants Tribunal and insurer. In this background, the deletion of Sub-section (3) Section 166 should be given full effect so that the object of deletion of said section by Parliament is not defeated.

7. When these are the observations of Supreme Court and this Court in respect of delay condonation in such claim petitions, it was not proper for the learned Member of the Tribunal to throw out the prayer of the appellants for delay condonation on improper grounds. The learned Member should have noted that after all appellant and Sohanbai are the villagers. They are bound to commit mistakes on dates. Even a city dweller commits mistakes on dates and other details while giving evidence in the Court by getting confused by the atmosphere of the Court and questions put by the Advocates appearing for the parties. The villagers who are not accustomed with the city life and atmosphere of the Court precincts get confused, bewildered. They answer the question on some occasions without understanding the bearing of the question asked. On many occasions they get baffled and answer improperly which tends to falsehood apparently though they do not mean it. When the Court is faced with such lot of the witnesses, the Court has to be cautious in understanding their contentions and submissions. The learned Member of the Tribunal has blamed the appellant in present case that the said Bansidhar Sharma was not examined. The learned Member did not note that it was say of the appellant that he was not knowing said Bansidhar Sharma.

8. The learned Member of the Tribunal should have also given proper importance to the evidence of the doctor who has been examined by the appellant in view of the stand taken by him when the learned Member of the Tribunal held that the age of the appellants, in view of the evidence of doctor in 17 to 19 years, he

should have accepted that circumstance in favour of the appellant keeping in view of the benevolent spirit behind the Amendment No. 54 of 1994.

9. After accepting the evidence which has been led by the appellant and without putting it to strict scrutiny, it should be accepted that the claim petition was filed within period of limitation after appellant attained the majority. The delay, therefore, has to be condoned keeping in view the Amendment Act No. 54 of 1994. Such delay condonation application filed in motor vehicle accident claims should not be thrown away. The Legislature did not want so and therefore, provisions of Sub-section (3) of Section 166 have been amended.

10. Thus, in view of above discussions, we hereby set aside the impugned order by allowing this appeal. The claim petition be treated as filed within time and it be heard and decided in accordance with law. The amount of cost if paid by the appellant, be refunded to him. No order as to costs of this appeal keeping in view the circumstances of the matter.