

(1966) 11 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 51 of 1963

S. Nanjundiah and Others

APPELLANT

Vs

Nanak Chand and Others

RESPONDENT

Date of Decision : 05-11-1966

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 110A, 110F

Citation : (1967) ACJ 1

Hon'ble Judges : Suraj Bhan Grover, J;N.M. Golwalker, J

Bench : Division Bench

Advocate : P.L. Dubey and S.K. Dubey, for the Appellant; R.D. Sharma, for Respondent No. 1, N.L. Mukerji and P.R. Padhya, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal by the Petitioners whose claim for compensation u/s 110-A of the Motor Vehicles Act arising out of accident on 17.12.1961 and resulting in injuries to them has been dismissed by the Claims Tribunal (First Additional District Judge, Gwalior) on the ground that they preferred it long after the prescribed period of limitation of 60 days from the date of accident, the claim having been preferred on 17.12.1962. The Tribunal rejected the petition of the Petitioners for condoning the delay on the ground that it did not disclose sufficient cause for the purpose.

2. According to the Petitioners, after they were discharged from the hospital at Gwalior they left for their home town i.e. Bangalore and there they consulted their family lawyer, Mr. B. Venkata Rao, sometime in the month of January 1962 as to what steps they should take to seek redress for the injuries suffered in the accident, that the said lawyer advised them that the claim for compensation could be presented within one year and accordingly they got the said lawyer to serve the requisite notices of their claim upon the parties liable for the same and as they did not succeed in obtaining redress out of Court they reached Gwalior where they were advised by their lawyer Mr. P.L. Dubey, Advocate, that the claim

ought to have been filed within 60 days of the accident. It was in these circumstances that they could not file the claim before 17.12.1962.

3. The Tribunal held that wrong advice of the lawyer in the instant case would not furnish a sufficient cause to the Petitioners for claiming condonation of the delay. Accordingly, it rejected the petition as barred by limitation.

4. The only question that falls for determination is whether, in the circumstances as aforesaid, the Tribunal was justified in not condoning the delay. In our view the Tribunal was right in not condoning the delay and dismissing the petition as barred by limitation. This appeal, therefore, has to be dismissed.

5. What the Appellant, to be able to establish that there was sufficient cause grounded on wrong advice given by the counsel for the delay in taking appropriate steps in Court within the time prescribed by law, has to show has been pointed out by the Full Bench of this Court in the case of *Mariambai and Anr. v. Hanifabai and Anr.* as under:

- (i) that it was given by a competent practitioner;
- (ii) that the practitioner, in giving the advice, exercised reasonable care; and
- (iii) that the advice given by him is founded on a view which could, in the circumstances of the case, be taken by any competent legal practitioner exercising reasonable care.

6. Undoubtedly Mr. Venkata Rao is a competent practitioner as is clear from his own affidavit that he has filed. Nevertheless the circumstances on record do not show that while giving the advice to the Petitioner he exercised reasonable care or that the advice he gave was founded on a view which could in the circumstances of the case, be taken by any competent legal practitioner exercising reasonable care. From his own affidavit it appears that he took the view that period of limitation was one year because, in the State of Mysore no Claims Tribunals were constituted u/s 110 of the Motor Vehicles Act and therefore ordinary remedy in a civil Court was available. But he lost sight of the fact that the remedy was to be pursued in the State of Madhya Pradesh and he should have taken care to verify whether such Claims Tribunals were constituted in that State or not before taking any particular view on the question of limitation. It is only when Claims Tribunals are constituted that the jurisdiction of ordinary civil Courts is taken away vide Section 110-F of the Motor Vehicles Act. It was, therefore, very necessary for him to first ascertain this fact. The omission to ascertain this fact first, before giving advice to the Petitioners cannot be said to be founded on a view which could be taken by any competent legal practitioner exercising reasonable care.

7. That apart, on Petitioners' own showing (paras 4 and 5 of their petition at paper book page Nos. 11 and 12) they were in Gwalior hospital from 17.12.1961 to 6.1.1962 and during their stay in the hospital they had contacted the opposite parties and had impressed upon the latter the desirability of settling the claim for

compensation. Not only that but on the day of their discharge from the hospital they had also in the same connection contacted the authorities of the Insurance Company with which the vehicle of the opposite party was insured. In these circumstances if the Petitioners had been diligent and careful they ought to have consulted some lawyer at Gwalior before returning to their home town and ascertained from him as to what was the legal position in the matter. It appears that they were not very keen to take the matter to Court and desired an amicable settlement out of Court. It was only when they reached Bangalore that they decided to put in their claim in a Court of law. All this would show that the Petitioners took no proper care with respect to their claim and cannot now depend upon the " wrong advice of their lawyer at Bangalore, which advice we have already pointed out is not an advice founded on a view which could, in the circumstances of the case, be taken by a competent legal practitioner exercising reasonable care.

8. It was also argued on behalf of the Petitioners that since the claim had arisen out of the injuries suffered in the accident they could not make a proper estimate of the same before completion of their medical treatment and obtaining the final result and therefore the time spent in the treatment was liable to be excluded. We are unable to accept this submission in the instant case as Petitioners have nowhere in their petition stated the duration of their treatment or the date of the final result thereof to enable the Court to calculate the period to be excluded. In fact, condonation of delay was not really sought on this ground. Only a passing reference to this aspect was made in para 5 of the petition. This is what has been stated:

That, besides the above, the Petitioners compensation in the case could only be assessed after they were cured, and it was known to them and it could have been known to them only after the loss sustained could be ascertained by them all of which could be assessed only after 9 or 10 months.

9. Lastly, relying on the case of *Dinabandhu Sahu v. Jadumoni Mangaraj and Ors.* it was urged on behalf of the Petitioners that sufficient cause should receive a liberal consideration at the hands of this Court so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the Appellant. In so far as the proposition, as aforesaid, in abstract is concerned, we cannot but bow down to the same. But when examined in the light of the circumstances pointed out above, we do not see anything but negligence, inaction and want of bona fides on the part of the Petitioners and their learned adviser at Bangalore. We, therefore, find ourselves unable to construe the words "sufficient cause" more liberally than what the circumstances in the instant case warrant.

10. The result, therefore, is we see no good and valid reasons to differ from the learned Claims Tribunal and accordingly dismiss this appeal. However, in the circumstances we make no order for costs.